

**Final
Environmental Impact Statement**

OLD ORCHARD WOODS
Subdivision Application

North Creek Road, Eatons Neck
Town of Huntington
New York

NP&V Project #85046

July, 2002

NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING



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**North Creek Road, Eatons Neck
Town of Huntington, New York**

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This document, together with the Draft Environmental Impact Statement concerning this proposal, represents a Final Environmental Impact Statement (FEIS). Copies are available for public review and comment at the office of the Lead Agency. Comments on the FEIS should be submitted to the Lead Agency listed above by to be included in the public record and considered in the Findings Statement.

Date FEIS Accepted:

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- D-1 Christine G. Ballow, Property Owners of Eatons Neck, April
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- D-2 John J. Ballow, April 25, 2002**
- D-3 William R. Butler, April 26, 2000[2]**
- D-4 Mario and Nadine Bottali, May 1, 2002**
- D-5 Dlieberman@qcc.cuny.edu, May 06, 2002**
- D-6 Unknown Commentator (Heidi Levine?), April 29, 2002**

**APPENDIX E FINDINGS STATEMENT, OLD ORCHARD WOODS
SUBDIVISION, Huntington Town Planning Board, July 19, 2000**



SECTION 1.0

INTRODUCTION



1.0 INTRODUCTION

This document is the Final Environmental Impact Statement (FEIS) prepared for a subdivision application involving a proposed 10-unit residential project on a 24.21-acre parcel of land in Eatons Neck, Town of Huntington, New York. The project site is located on the west side of North Creek Road, west of its intersection with Eatons Neck Road. The site has approximately 807 feet of frontage along North Creek Road, and approximately 795 feet of frontage on the entrance to Huntington Bay. The project site is identified as Suffolk County Tax Map District 400, Section 01, Block 2, Lot 4.1. The subject property is the site of the former Hogan Estate. The property is presently occupied by seven structures (1 cottage, 1 residence, 1 garage, 1 shed, 2 pumphouses and a gazebo), of which only one is presently in use as the applicant's residence. The applicants are William Kollmer and Mary Ellen Curtis (owner, Eatons Neck, New York) and William Kollmer Contracting, Ltd.

This FEIS is a part of the EIS record; the Draft EIS is incorporated by reference such that the combination of the DEIS and this document constitutes the complete EIS.

1.1 Purpose of this Document

This document addresses the agency comments on the DEIS and subdivision application, the written public comments received by the Lead Agency, and the oral public comments provided during the April 24, 2002 public hearing.

1.2 Organization of this Document

Correspondence regarding the SEQRA-related procedures subsequent to acceptance of the DEIS is contained in **Appendix A**, and the transcript of the public hearing is presented in **Appendix B**. **Appendix C** contains written comments provided by Town agencies, **Appendix D** contains written comments provided by the public during and subsequent to the public hearing, and **Appendix E** contains the SEQRA Findings Statement on the EIS prepared for the prior 22-lot application.

Each substantive comment contained in either **Appendix B**, **C**, or **D** has been numbered sequentially. In addition, the subsection where the response can be found is provided adjacent to each comment. There were a total of 124 individual comments; **Appendix B** contains comments B-1 to B-36; **Appendix C** contains comments C-1 to C-44, and **Appendix D** contains comments D-1 through D-44. However, because of the large number of similar/duplicate comments, only 28 different comments were made. All similar comments have therefore been grouped together, with one response to all such comments provided.

All responses are presented in Sections 2.0 through 9.0, which have been organized based upon the type of impact to which the comments refer. Each subsection responds to one different



comment. The comments addressed in each subsection have been paraphrased, so that one response will suffice for all comments in that subsection. The comment numbers are also listed in each subsection, along with the corresponding responses, so that the reader may refer back to the comments in their original form.

Each response provides the information necessary for the Lead Agency (the Huntington Town Planning Board) to make an informed decision on the specific impacts of the project. This document fulfills the obligation of the Huntington Town Planning Board in completing a Final EIS based upon 6NYCRR Part 617.9 (b)(8).



SECTION 2.0

GEOLOGICAL RESOURCES



2.0 GEOLOGICAL RESOURCES

2.1 Clearing & Grading Near Bluff

Comments B-11, C-17, C-18, C-29, C-43 and D-44:

These comments refer to potential impacts from clearing and grading operations within the 125-foot bluff setback, as well as perceived visual impacts to neighbors to the south along Essex Drive from "landfill" in lots.

Response:

The proposed Old Orchard Woods subdivision has been designed to preserve the primary natural features of the site. The eastern part of the property adjacent to North Creek Road contains areas with steeper slopes in a forested setting. As preferred by the Town Engineering Department, the Preliminary Map locates the recharge basin in the northeast part of the site. The western part of the site includes the beach and bluff areas associated with Huntington Bay. In order to provide a setback from the bluff, a 125-foot natural buffer will be established. The central part of the property is less environmentally sensitive than the east or west parts of the site. This area will be utilized for establishment of 10 residential home sites. The proposed subdivision road will conform to grade as closely as possible, minimizing the amount of cut and fill. It is expected that cut and fill will be approximately balanced with the exception of the recharge basin, which will require exportation of material. Individual home sites will be developed under grading plans to be submitted to the Town Building Department as part of building permit review. The extent of excavation on each lot will be dependent on the design of individual homesites. It is possible to preserve additional vegetation within the home site areas, particularly where lots are aligned with adjoining rear yard setbacks. This would include a substantial east-west running area within the central part of the site. The proposed subdivision reduces clearing and grading to the maximum extent practicable. The alternative section of the DEIS includes a comparison of site quantities including natural areas. This can be used as a basis for supporting findings to determine a preferred alternative subdivision design.

The proposed 125-foot preserved natural buffer area will be subject to covenants and restrictions limiting clearing, and if deemed necessary by the Town, granting the Town the authority to enforce clearing restrictions within each individual lot. It is the developer's intent to comply with all such covenants and restrictions.

2.2 Bluff Erosion, Stabilization/Protection and Littoral Drift

Comments B-28, B-29, B-33 to B-36, D-11, D-16, D-39 and D-40:

These comments reflect questions and concerns related to: possible effects of bluff erosion on beaches, lot sizes, the necessity for bulkheading and vegetation preservation, and the rate of bluff erosion.



Response:

The method used for calculating the recession rate of the bluff was obtained from "Technical Report No. 18, Erosion of the North Shore of Long Island" (cited in and included as Appendix B of the DEIS). The source report was conducted by the Marine Sciences Research Center at the State University of New York at Stony Brook with support provided by the Nassau-Suffolk Regional Planning Board (now Long Island Regional Planning Board) and the NYS Sea Grant Program. The objective of the study was to determine the rates of bluff recession along the north shore of Long Island and the impact that these rates would have on future development. The study utilized data from historical aerial photographs and from several referenced studies to calculate bluff recession rates at several points along Long Island's north shore. One of the bluffs studied was located along the western shoreline of Eaton's Neck at or in close proximity to the bluff face along the Old Orchard Woods property. At this location, the above-referenced study specified a recession rate of 0.8 feet/year for the 80-year period 1885-1965.

Given the apparent absence of any third-party empirical studies involving the subject site after 1965, Nelson Pope & Voorhis, LLC (NP&V) conducted a new bluff recession analysis utilizing the available aerial photographs (which spanned the period 1976-96) for the DEIS. The purpose was to determine if any increase or decrease in the 0.8 foot/year bluff recession rate could be observed during this period, and whether any such change could be correlated with the occurrence of storms during this 20-year period. As was done for the above-referenced study, this new rate was calculated by measuring the decrease in distance along a common transect between the bluff and a fixed point located in the middle of the property. The 1.9 foot/year recession rate presented in Section 2.1.3 of the DEIS was a conservative estimate applicable to this 20-year period only. If applied to a period outside of this time span, a 1.9 foot/year bluff recession rate would represent a significantly more conservative long-term average bluff recession rate than that contained within the prior study.

In response to requests made during and after the additional DEIS hearing in regard to the accuracy of its bluff recession rate, NP&V has taken additional measurements along four new transects, and averaged the five results. The results of these additional measurements confirm the original recession rate of 1.9 feet/year. Given that bluff erosion is episodic in nature, this increase from the 0.8 foot/year recession rate for the period of 1885-1965 can be likely explained by the existence of a number of significant storms occurring during this more recent period. Even if one assumes that the bluff recession rate for the intervening period (1966-76) was at the conservative rate of 1.9 feet/year, the overall average annual recession rate over the 110-year period of 1885 to 1996 is estimated to be 1.09 feet/year.

As stated, bluff erosion is episodic in nature. Accordingly, it is impossible to predict with absolute certainty the exact amount of bluff erosion that will occur within any given year. However, if one uses the 1.09 foot/year rate calculated over the 110-year period prior to 1996, it could be concluded that no structure at least 100 feet from the existing bluff would be in jeopardy for approximately 92 years, which is significantly greater than the 50-year period requested for evaluation. In addition, as discussed in the DEIS, if certain measures are taken by the homeowners or developer to support the bluffs in a manner consistent with those already



taken on the adjacent properties, this period of time may be extended beyond 92 years, which again is well in excess of the 50-year period requested for analysis.

As a point of reference and as mentioned in the Technical Letter of Mr. Terchunian (see Appendix D of the DEIS), this portion of the site has been deemed to lie within a "Coastal Erosion Hazard Area". In such an area, setback regulations defined by Article 34 of the NYS Environmental Conservation Law and implemented by the Town of Huntington prohibit construction within only 25 feet of the bluff, as has occurred on adjacent sites. Assuming the calculated 1.09 foot/year recession rate, such a setback would provide protection from bluff recession for only 23 years. The minimum setback from the bluffs to be provided under the proposed project is 125 feet, as shown on the proposed Preliminary Map and is far in excess of the requirements of Article 34.

In terms of the necessity for bulkheading, the precise method of bluff protection measure has not yet been determined, as new methods are evolving. However, if bulkheading was chosen as the preferred method by the individual homeowners, it is not anticipated that the construction of a toe stabilization structure would result in a reduction of sand to beaches downdrift of the site. Such structures located parallel to the shoreline and above mean high water are documented to be benign to the environment. Based upon the subject property's beach and bluff width, the site is not the sole or major contributor of sand nourishment to the shoreline south of the subject property. This is determined by the potential contribution of the site to the overall sediment budget of material in transport. As a result, bulkheading can be an effective means of toe stabilization that would assist in protecting the bluff from natural environmental forces that currently exist. It should be observed, however, that this is not the only bluff protection method available to the individual homeowner, nor the one advocated by the applicant's experts.

An assessment of the projects impact along the western shoreline of Eaton's Neck has been provided within a technical letter prepared by a qualified professional specializing in coastal geology. The letter, report and supporting documentation has been included as Appendix D of the DEIS. The letter presents a review of the local coastal processes as well as the potential impact that the proposed development and potential bluff protection measures may have along the subject shoreline. In addition, the letter also provides an evaluation of the project's compliance with State and Local regulations regarding coastal erosion and management.

The assessment identified three separate littoral cells along the western shoreline of Eaton's Neck which operate independently but are also connected to the regional sand transport system. The location and extent of each cell are provided below:

- Northern Cell - Eaton's Neck point to the Eaton's Neck Boat Basin Inlet.
- Middle Cell - Eaton's Neck Boat Basin to Argyle/Birmingham Drive (the subject site is located here).
- Southern Cell - Argyle/Birmingham Drive to the end of the spit at West Beach.

The northern cell is identified as contributing the largest input of beach-compatible sediment along the subject shoreline in the form of a linear sandbar. This sandbar migrates progressively



southward and has resulted in the widening of the beach observed along the middle cell. The report further states that the sand transport process has been so significantly interrupted due to the groin field located between Argyle Drive and West Beach that sandbars migrating from north to south are unlikely to provide substantial sediment to the West Beach peninsula and spit located within the southern cell. The specialist concludes that the bluffs located along the middle cell (which include the bluffs along the subject site) provide little if any sediment to the littoral system. A majority of the bluffs within this area are artificially stabilized, and sediments within these bluffs are not compatible with the beach sands observed in the southern cell. The author concludes that since the site's bluffs do not appear to provide significant sediment to the beach, the construction of erosion protection structures is not likely to adversely impact the beaches at or down drift of the site.

It should also be realized that the overall project design will not result in impacts related to both bluff erosion and bluff face seepage. Specifically, development of the site will result in the provision of a 125-foot setback from the bluff face which will be subject to covenants and restrictions limiting clearing. This will ultimately result in the preservation of natural vegetation which will stabilize the bluff face.



SECTION 3.0

WATER RESOURCES



3.0 WATER RESOURCES

3.1 Clay Lenses, Bacteria and Sewage Effluent

Comments B-10, B-12, B-13, B-14, B-26, C-32, C-37, D-1, D-7, D-14 and D-17:

These comments reflect concerns regarding seepage of groundwater from the bluff face, the effects of possible bacterial contamination of septic effluent on both neighboring homesites and Huntington Bay, and the extent, continuity and slope of the clay layer beneath the site.

Response:

The proposed subdivision has been designed to allow on-site discharge of sanitary waste in a manner that conforms to County design and density requirements, and considers the features of the property. The ability to discharge sanitary effluent on site is determined by Suffolk County Sanitary Code Article 6, which establishes density limitations. The project site lies in Groundwater Management Zone VIII. The proposed project will not exceed the allowable flow for the property based on the discharge from the 10 proposed homes. Conformance with Article 6 of the Sanitary Code is documented in the DEIS. In addition, a groundwater impact model has been used to simulate the concentration of nitrogen in recharge. The findings in the DEIS conclude that the project will not adversely impact the groundwater as a result of nitrogen loading from the proposed subdivision.

A significant amount of study has been devoted to understanding the geology underlying the subject site. A series of soil borings have been installed on the property and three geologic cross sections have been constructed based on the soil boring logs. There is one limited location on the property where a low-permeability clay exists approximately 70 feet below ground surface. A reduced permeability clay unit has been documented in other portions of the property approximately 40 feet below grade; however, this unit does not result in perched water conditions. The deeper gray clay is restricted to the western part of the property and is the reason why seepage is visible at the face of the bluff. As illustrated in the DEIS (Figures 2-2 A-C) this unit is not continuous below the property and dips toward the south and east. Therefore, it is too deep and discontinuous to impact the proposed on-site discharge of sanitary waste using individual systems.

The proposed project, if approved will result in the construction of 10 single family residences with four (4) individual homes located within the western portion (bluff side) of the subject property. This is a reduction in the total number of units originally proposed for the project which would have resulted in the construction of 22 residences with 8 home sites located in the western portion of the property. This overall reduction in density will result in a significant decrease in the amount of sanitary wastes disposed of at the site as opposed to what would have been discharge under the original 22-lot proposal. In addition, under the original proposal lots along the western property line of the subject property would have been set back 100 feet from the bluff face. Under the current plan a 125-foot buffer will be provided which will increase the distance of sanitary systems from the bluff face thereby further reducing the extremely limited potential for the seepage of sanitary wastes along the bluff face.



The proposed sanitary systems will be distributed throughout the site and will be designed according to SCDHS regulations. Each system will require an individual permit to construct, and a crane dug test hole will be performed on each individual home site for the system. Installation of the test holes will be observed by representatives of the Suffolk County Department of Health Services (SCDHS) and should lower permeability clay be observed, it will be excavated until good leaching material is encountered. The excavation will be backfilled with good leaching material and sanitary systems will be placed within these holes. Based upon the detailed understanding of the site geology resulting from the test holes, no significant clay units are expected to be encountered in the installation of individual on site sanitary systems. The number of test holes installed far exceeds the number required by the SCDHS for preliminary subdivision design. In addition, the depth of these test holes also far exceeds the requirements of the SCDHS for preliminary subdivision design. The design and layout of these leaching pools will allow the discharge of effluent to occur over a large spatial area reducing the potential impact to groundwater resources underlying the subject property.

When these leaching effects are considered, the systems setback distances from the bluff will allow for the equilibration of any influences to groundwater that may occur and will eliminate the potential for groundwater discharge along the bluff face. This makes this system of sanitary waste treatment and disposal ideally suitable for the proposed project due to the hydrogeologic character of subsurface soils at the site. These soils which consist of fine, medium and coarse sand and gravel are very effective at leaching effluent. The ability of these soils to leach effluent is determined by their permeability and is defined as the capacity for a porous media to transmit a fluid under unequal pressure. The rate at which these fluids are transported through a porous media is described as the permeability coefficient (also known as hydraulic conductivity) and is characterized in terms of its horizontal and vertical components. The soils within the area of the project site possess a horizontal permeability coefficient of 270 ft per day and a vertical permeability coefficient of 27 ft per day. When these values are related to the porosity (void space within a medium) and hydraulic gradient (change of total head per unit distance) the velocity of groundwater flow can be determined. For the soils underlying the site, the rate of groundwater flow is approximately 1-2 ft per day. These values suggest that the soils beneath the site are conducive to rapid infiltration of effluent discharge and can accommodate the flow from the system without affecting groundwater hydrogeology.

As a result of the work conducted for the Draft and this Final EIS for Old Orchard Woods, it is concluded that the proposed project will not adversely affect the groundwater or surface water resources as a result of the installation of sanitary systems. All effluent will leach through the underlying soils in an unsaturated zone of sufficient depth to allow for conversion of ammonia to nitrate and to remove bacteria and viruses. Effluent will leach to the water table and become part of the regional groundwater reservoir. Since the total nitrogen load on the property is consistent with SCDHS requirements this will not adversely affect groundwater resources.



SECTION 4.0

ECOLOGICAL RESOURCES



4.0 ECOLOGICAL RESOURCES

4.1 Clearing

Comments C-3, C-23, C-24, C-25, C-33, C-38 and D-29:

These comments request additional information regarding the amount of, distribution of, and limitations on, clearing and tree removal during and after construction; this information is requested for the proposed project and each alternative discussed in the DEIS. In addition, details of the tree-preservation/protection methods to be taken during the clearing and construction phases are requested.

Response:

Appropriate assumptions were utilized to determine clearing limits as stated in the DEIS, as the proposed project is only for preliminary subdivision approval and individual lot development will occur at a later date based on building permit plans for homesites. It was estimated that between 5.34 and 6.60 acres of the native woodland on site will be cleared during construction, representing roughly 26 to 32% of the native woodland that currently exists on-site. This allows approximately 70% of the vegetation on the site to remain natural. As previously stated, a 125-foot natural and undisturbed buffer is proposed along the top of the bluff and additional woodland will be preserved within individual lots. It is noted that the natural vegetation located on the steeper slopes areas will not be disturbed. Building of homesites will occur on relatively flat areas, reducing the amount of grading and associated clearing required. Additionally, the internal roadway has been designed such that it will follow the natural contour of the land further reducing on site grading and clearing. Additionally, covenants and restrictions will be designed for each lot in order to preserve woodland within private properties.

It is reasonable to expect that homeowners will desire yard areas and possible outdoor amenities. It is also reasonable to expect that the natural beauty of the land including forested areas and specimen trees will also be a desirable part of this community. As part of building permit review and site construction, reasonable building envelopes, yards and homesites will be created. Grading will be minimized as much as possible. Specimen trees will be maintained where possible and buffer strips will be left to remain natural in the adjoining side yards and rear yards of homesites. Individual homeowners would have the right to maintain their properties. Trees which are diseased or dead or may pose a threat to on-site improvements would be expected to be removed or maintained. This is contemplated in the proposed subdivision design that retains the primary natural features of the site.

The DEIS states that the project will retain trees within the proposed construction/disturbance areas where (and if) possible. Additionally, it is noted that the previous 22-lot subdivision also proposed to retain trees within construction/disturbance areas if possible. As such, there is no difference between the current proposal and the 22-lot subdivision proposal with regard to saving trees within construction areas.

Once approved, the subdivision plan will undergo complete and detailed site plan review in order to ensure maximum tree preservation and each lot will require individual review and a building



permit prior to construction. Clearing limits will be delineated prior to construction so as to avoid any inadvertent clearing of vegetation. The proposed preserve area along the bluff face will be subject to covenants and restrictions limiting clearing, and if deemed necessary by the Town, the Town is authorized to enforce clearing restrictions within each individual lot.

4.2 Habitat and Wildlife Impacts

Comments B-2, B-4, B-5, B-6, C-39, D-5, D-18 and D-19:

These comments reflect concerns that: the effects of tree removal and construction will "essentially decimate the ecosystem"; impact several Species of Special Concern (as designated by the NYSDEC); tree removal will be excessive; and native plant and animal species will be displaced in favor of non-native or species (including rats).

Response:

The primary natural features of the site will be preserved and covenanted to remain natural. The development of 10 single-family residential dwellings and associated amenities in conjunction with an estimated 70% preservation of the existing vegetation on site is not anticipated to "decimate" the existing ecosystem. It was recognized that some of the existing trees to remain adjacent to proposed cleared areas may become stressed due to the direct change in conditions, however preservation of nearly three-quarters of the site as natural is not anticipated to "kill most of the trees".

Further, the DEIS recognizes that most species of wildlife are mobile and at least somewhat tolerant of human activity. A detailed account of those species that may be impacted by the proposed clearing operation and resultant increase in human activity is included in the DEIS. It was recognized that the effects of clearing and development on wildlife populations can be cumulative and the effects need to be taken into consideration in light of regional planning, however species displacement is not anticipated to be significant due the preservation of an estimated 70% of the existing habitat. The DEIS provides a detailed representation of the wildlife species expected on site (and directly observed) as well as the individual habitat requirements and adaptability of each species following development and should be further consulted for this information.

The DEIS recognizes that edge habitat will increase following development, which typically favors growth of understory species which require greater light penetration. Invasive alien species could become established within individual lots and within natural areas; however, it is expected that yard areas will be maintained by homeowners and maintained areas will transition to natural wooded areas within the site. The large blocks of preserved natural vegetation will therefore remain. Additionally, the DEIS stated that the creation of a recharge basin will increase the habitat value for particular species of wildlife. As recharge basins can act as wetland type of habitats, some avian species and amphibians may benefit from the creation of this feature.



The site does not provide an abundant amount of food, shelter and water resources to support an over population of these species. Some individuals may be displaced onto adjacent properties during construction, which may potentially create a nuisance for the surrounding homeowner. It is recognized that most homeowners are aware of and practice preventive measures to control and/or eliminate rodent populations on their properties (such as eliminating food and water supply, eliminating protective cover, and sealing or covering holes and crevices to reduce entry into dwellings.) Additionally, there are a variety of baits and traps on the market available for use by homeowners, as well as nuisance wildlife specialists, should use of such become desirable by individual homeowners. Adjacent landowners will be notified prior to the commencement of construction. Significant impacts to neighboring landowners as a result of rodent displacement are not expected.

The piping plover and least tern were listed as species that occur in habitats that are found on and/or in the vicinity of the subject property; these species were acknowledged in the DEIS as *"expected to utilize the site given the habitats present."* The site was inspected on several occasions during the breeding season and no individuals or nests were observed. The appropriate nesting habitat for these species found on site is limited and represents only a small quantity of the available nesting habitat in the area. This area will not be altered by the project so no direct impacts to these species are expected.

4.3 Presence of Town Arborist

Comment C-44:

"The Town professionals in the Department of Planning and Environment and/or an arborist should monitor this site during construction to ensure adherence to all guidelines."

Response:

The Town has the ability to inspect construction progress with Town personnel including either building inspectors or, if the Town chooses, a Town arborist. It is the developer's intent to comply with all conservation easements and restricted areas that will remain natural.



SECTION 5.0

TRANSPORTATION RESOURCES



5.0 TRANSPORTATION RESOURCES

5.1 Roadway and Drainage Improvements

Comments B-18, B-32, C-6, C-12, D-12, D-20, D-23 and D-32:

These comments indicate a desire by the community to retain the existing rural character of the area by not improving North Creek Road to Town standards, while the Town requests information as to where the funding for the improvements to this roadway (bonded as part of the prior subdivision in 1989) can be found, and concerns that paved surfaces within the site (assuming the internal roadway is built to Town standards) will exacerbate an existing runoff problem. In addition, there is a suggestion that the North Creek Road right-of-way has historic significance. Finally, the need for a recharge basin is questioned.

Response:

The applicant will construct the new internal subdivision road and will fund the Town-required improvements to North Creek Road from the point where the paved surface of North Creek Road presently stops (at the southeastern extremity of the subject site) to the northeastern corner of the property (a length of about 1,100 feet). From the site's southeastern corner eastward to Eatons Neck Road, improvements (at Town standards) to North Creek Road will be funded by the bond established with the Town expressly for this purpose at the time of the original Hogan Plat subdivision in 1989. The applicant anticipates coordinating the completion of the roadway improvements outside the subject premises with the applicant's contractor with payment for such roadwork improvements outside the subject premises being provided for by the Town. All of these improvements will be performed to Town of Huntington standards, which include an increase of approximately 10 feet in the paved width of the section of North Creek Road between the property line and Eatons Neck Road, to a 34-foot paved width. These improvements will be implemented following project approval and will be subject to bonding by the Town Planning Board, to ensure proper completion of these improvements. Once completed, the roads will be offered to the Town for dedication and, if accepted, will thereafter be maintained by the Town.

It should be noted that the roadways and associated drainage system improvements, as required by the Town of Huntington, will mitigate the existing runoff impacts in the area, by controlling stormwater. Review of the documents relating to the right of way for North Creek Road does not indicate that there is any historic significance to this feature. It should be noted that the prior DEIS contained a thorough study of the cultural resources of the site, and did not reveal any significance in this regard. The NYS OPRHP reviewed the above-noted studies, and likewise did not indicate any significance for this roadway, when it stated "... it is the OPRHP's opinion that your project will have No Impact upon cultural resources in or eligible for inclusion in the State and National Registers of Historic Places."



5.2 Sight Distance

Comments B-17, B-31, C-5, D-24 and D-38:

These comments question the speed limit assumed on Eatons Neck Road in the vicinity of North Creek Road, on which the sight distance analysis in the DEIS was based.

Response:

As stated in Section 3.4.3 of the DEIS:

In regard to the issue of adequate sight distance at the Eatons Neck Road/North Creek Road intersection, the sight distance to the west [southwest] along Eatons Neck Road is 159 feet. This is an adequate sight distance for a design speed of up to 25 MPH. As the existing speed limit at this point is 30 MPH, installation of a W2-2 "Intersection Ahead" sign, or a reduced speed limit of 25 MPH in this portion of the roadway could eliminate this condition. An alternative solution would be for the Town to increase the amount of clearing at this corner, if such clearing can be achieved in the available right of way. The sight distance to the east [northeast; 470 feet, as stated in Section 2.4.3] is in excess of what is required to meet minimum standards. The use of a curved mirror is a helpful suggestion that the developer could implement nonetheless.

5.3 Traffic Impacts from Soil Removal Trucks

Comment C-30:

"Potential traffic impacts should be addressed from transporting excavated soil from the site through the community including the Villages of Asharoken and Northport."

Response:

Trucks removing soil during the grading phase of construction are not anticipated to result in significant traffic impacts in Asharoken or Northport, in consideration of the following factors:

- As the duration of the grading phase would be a small portion of the overall construction period, related impacts could only occur for a similarly limited length of time;
- While a Grading Plan has not been prepared at the present time, it is anticipated that such a plan will reflect a desire on the part of the Town and applicant to minimize the amount of soil removed (as well as the length of time required and the cost to remove it), by reusing as much as practicable within the site as fill. This policy would have the added benefit of minimizing the number of truck trips required to remove this material, and consequently the potential for impacts to the community;
- For the truck trips ultimately required, the vehicles would make their trips only during normal daytime hours; it should be remembered that any significant level of site development would require a similar temporary increase in truck traffic;
- As with any development resulting in an increase in vehicle traffic, it would be expected that other motorists and pedestrians would exercise a level of caution commensurate with the overall level of traffic in the vicinity, which would include truck traffic;
- The relatively low speed limits of the local roadways, as well as the limited sight distances, proximity of residences and narrow roadways in the area already result in an elevated level of attention and caution on the part of drivers, particularly truck drivers; and

- It is anticipated that the excavated material will be covered by tarps prior to exiting the site, in order to minimize the potential for dust and deposition on roadways.



6.0 LAND USE, ZONING & PLANS

6.1 Public Acquisition

Comments B-1, B-3, B-15, C-4, C-21, C-35, C-41 and D-31:

These comments request the Town, County and State of New York (initiated by a recommendation of the Planning Board to the Town Board) to acquire the site, based on its ecological significance and general recommendations of the Town Comprehensive Plan, Long Island Sound Management Plan, the New York State Open Space Conservation Plan, and the Town Conservation Board.

Response:

The subject site is currently in private ownership and is zoned for residential use. The property owner pays taxes on the property as a privately-owned real estate holding. The proposed project is consistent with zoning and allows the property owner to realize an economic return on the property. In addition, the EIS process provides a forum for consideration of project impacts, mitigation and alternatives with a final decision based upon the weighing of environmental, social and economic factors.

As described and analyzed in the DEIS, the proposed project is a low-density residential use in keeping with the use and density of the vicinity, as required by the R-80 zoning of the site. In conformance with this zoning, and in conformance with the various land use plans, studies and regulations (also described in the DEIS), the proposed layout will be sensitive to the unique and significant environmental and aesthetic resources of the site and vicinity, as the applicant properly seeks to retain such as a feature of the overall project. In fact, the project will retain approximately 70% of the site in its natural state (including 100% of the bluff), which are the characteristics which produce the site's environmental and aesthetic value.

The DEIS considers alternatives to the proposed project, one of which is the no action alternative. The public purchase of the property would essentially fulfill the no action alternative by eliminating the potential for development of the subject site. If the site were to be purchased, it would have to be through negotiations between the project applicant and a municipal entity. Any purchase of the land would have to be based on the fair market value of the property. Following the passage of Town Board Resolution 199-731, the applicant and his advisors have had discussions and met with representatives of the Environmental Open Space and Park Fund Review Advisory Committee to discuss the possible acquisition of the site by a governmental agency. To date, the applicant has not received any formal offer by any government agency to purchase the property.



6.2 Conformance with LWRP Plan

Comment C-36:

"As the Planning Board is aware, the Town Board initiated the preparation of a Local Waterfront Revitalization Plan (LWRP) for the unincorporated waterfront portions of the Town, of which Old Orchard Woods is a part. Although this LWRP will not be adopted by the Town for approximately two years, the intention for the LWRP State mandated policies to apply to this land is clear. In this light, the comments made above are supported by the State mandated LWRP policies. It should also be noted that if the LWRP were now in effect for Old Orchard Woods, the impacts referenced above would have to be satisfactorily mitigated before a positive consistency determination could be made, and the project approved by the Planning Board."

Response:

Contact with the New York State Department of State (NYSDOS), Division of Coastal Resources and the Town Department of Maritime Services, indicates that the Draft Huntington Local Waterfront Revitalization Program (LWRP) plan was submitted in 1989, and is nearing completion (the Town is making final revisions and has begun the SEQRA review process). The commentator states that this plan "... will not be adopted by the Town for approximately two years...". Therefore, at the present time, the Town of Huntington does not have an accepted LWRP plan in place. It was for this reason that the DEIS did not include a review of the conformance of the proposed project to the draft plan. Section 2.5.3 of the DEIS indicates that, in the absence of an accepted LWRP plan, the NYSDOS reviews eligible applications for conformance with its Long Island Sound Coastal Management Program. The review of the proposed project with the above-referenced program (see Section 3.5.3 of the DEIS) indicates that the proposed project conforms to this program. Therefore, as the program is designed to provide the same level of protection as an accepted LWRP, it may be concluded that the proposed project will also conform to the recommendations of the Town's LWRP, if and when adopted.

The applicant has reviewed the current draft LWRP Plan for Huntington Harbor. This document indicates that the study area within which the Huntington Harbor LWRP Plan was prepared does not include the Old Orchard Woods site. Nevertheless, the following discussion has been prepared to analyze the conformance of the proposed project to the restrictions and recommendations of this draft LWRP Plan.

Developed Coast Policies

1. *Foster a pattern of development pattern in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.*

The proposed project will retain the existing vegetated, natural appearance and character of the site, thereby minimizing the potential for further reduction in these factors in comparison to development in the vicinity.

2. *Preserve historic resources of the Long Island Sound coastal area.*

As the site has no established or suspected historic resources, no such impact is anticipated.



3. Enhance visual quality and protect scenic resources throughout Long Island Sound.

Preservation of approximately 70% of the site in its naturally-vegetated condition, including the entire bluff face and all vegetation within 125 feet of its crest, will protect the existing visual aesthetic of the site for observers on and adjacent to Long Island Sound, Huntington Bay and Huntington Harbor.

Natural Coast Policies

4. Minimize loss of life, structures, and natural resources from flooding and erosion.

The proposed project will avoid development within 125 feet of the established bluff line, thereby minimizing the potential for slope failure due to increased development in this area. Water quality will be retained by installation of on-site septic and stormwater recharge systems, in conformance with established SCDHS regulations. The project is anticipated to have minimal potential for impact to resources of Long Island Sound and/or Huntington Bay, as only a single walkway to the beach is provided. Finally, no sources of air emissions are present, and no hazardous or toxic substances would be stored or used on the site, thereby eliminating potential sources of air and/or water pollution.

5. Protect and improve water quality and supply in the Long Island Sound coastal area.

Water quality within Long Island Sound and Huntington Bay will be protected by project's conformance to all applicable regulations and design requirements of the SCDHS and SCDPW in regard to the proposed septic systems and recharge system, as well as the proposed 125-foot setback.

6. Protect and restore the quality and function of the Long Island Sound ecosystem.

The quality and function of the Long Island Sound ecosystem will be protected by the project's retention of approximately 70% of the natural vegetation on-site, to enable continuing function of the beach, bluff and adjacent areas as wildlife habitat.

7. Protect and improve air quality in the Long Island Sound coastal area.

The proposed project does not include any use or function that would result in impacts to air quality.

8. Minimize environmental degradation in the Long Island Sound coastal area from solid waste and hazardous substances and wastes.

The subject site will be served by a private carter for solid waste removal, and will not include the use or generation of any hazardous or toxic wastes (other than household cleaners and possibly landscape chemicals typical of residential use), it is not anticipated that proposed project will result in any potential for degradation of the long island Sound coastal area.

Public Coast Policies

9. Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Long Island Sound coastal area.

The proposed project does not include provision for public use of the site, nor for public access to the beach through the single walkway to the beach through an easement within the site.

Working Coast Policies

10. Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations.



The proposed project is residential in nature, and does not include any provisions or features relating to commercial uses, nor do any features of the project represent restrictions upon such activity.

11. Promote sustainable use of living marine resources in Long Island Sound.

The proposed project does not include any use or function that would impact the living marine resources of Long Island Sound. Rather, the project would enhance such resources and their sustainability, by enhancing the site's residents' knowledge, understanding and appreciation of such resources.

12. Protect agricultural lands in the eastern Suffolk County portion of Long Island Sound's coastal areas.

The proposed project does not include any agricultural use or the removal of agricultural land.

13. Promote appropriate use and development of energy and mineral resources.

The proposed project does not include the development of any energy resource; the use of energy sources by the project (i.e., electricity, natural gas and gasoline) will be typical for the proposed use.

6.3 Impacts from Prior 22-Lot Plan

Comment C-19:

"Page S-1: states that the Planning Board determined the 'Subdivision of the property into 22 lots would not result in significant impacts'. This statement is incorrect. As indicated in the Planning Board's Findings Statement it was determined that 'significant impacts (direct and indirect, short and long term) would result with the 22-lot subdivision'."

Response:

This comment misquotes the DEIS; page S-1 (as well as page 1-1) states:

The Findings Statement [emphasis added] determined that the subdivision of the property into 22 lots on 24.21 acres would not result in significant adverse impacts.

The above statement was based upon a reading of the "Certification of Findings to Approve/Fund/Undertake" (July 2000, and endorsed by the Town Director of Planning and Environment, see **Appendix E**), which was prepared for the prior 22-lot subdivision project:

Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement, and

Consistent with social, economic and other essential considerations to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.



While the above does not specifically state that there would have been no significant adverse impacts from the proposed 22-lot subdivision, it does allow for the conclusion that a subdivision of the site (per Alternative 4 of the prior DEIS) “...*may be supported*” if mitigative conditions specified in the Findings Statement were incorporated. The current DEIS understandingly concludes that the current 10-lot subdivision, redesigned to further reduce potential impacts and reduced in yield would not result in significant adverse impacts in view of density reduction, project design and appropriate mitigation.

6.4 Rezoning of Site

Comments B-24, C-20 and D-35:

These comments of the Town Department of Planning and Environment and public question the applicant's position that the recent Town-initiated rezoning of the site from R-20 to R-80 was not justified on the basis of the then-existing pattern of zoning (particularly adjacent sites) in the vicinity.

Response:

It is acknowledged that the project site lies in an area of the Town characterized by low-density residential use, which has produced the area's distinctly rural atmosphere. This density of housing is based upon a mix of lot sizes (and associated zoning) of one-half, one and two acres. As described and discussed in the DEIS, the subject site is located in an area of transition between smaller lot sizes to the south (commensurate with the R-20 and R-15 zones) and larger lots to the north and east (zoned R-80).

Thus, the mix of zoning classifications resulted in the character of the area; there was no need to change the zoning of the site if only protection of the rural aesthetic was the intent of the Town Board. Furthermore, intermediate lot zoning of one-acre provides similar benefits in terms of reduced density and ability to protect natural resources.

6.5 Cluster Plan/Alternative 3

Comments B-22, B-23, B-30, C-2, C-10, C-22, C-34, C-40, C-42, D-9 and D-34:

These comments indicate opposition to the previous 22-lot and current 10-lot designs, as neither represents a “cluster” design (as understood by the commentator). The comments also question why a cluster alternative was not approved then or as presently requested.

Response:

The proposed project and Alternatives 2 and 3 are “cluster” designs (more specifically, “modified cluster” designs), based upon the 3.4-acre Reserve Area on the western part of the site. The lot sizes shown are commensurate with the lot sizes predominant in the area and the primary natural features and contiguous vegetation are preserved. Based upon concerns expressed by the Town and public that the project would be inappropriate for the area, the applicant determined to

satisfy both the Town and public by balancing a clustered design featuring lot sizes as similar to adjacent areas as possible, with maximum amounts of natural vegetation preservation and bluff protection. It is acknowledged that Alternative 3 would preserve a greater amount of natural vegetation than the proposed project.

The DEIS includes a detailed description of the project and assessment of impacts associated with the proposed Old Orchard Woods subdivision. A number of alternatives were required by the lead agency in the scoping of the DEIS. The final approved project will be determined by the Town Planning Board and will be based on the Draft and Final EIS record and the Findings as prepared by the Town Planning Board. These findings must weigh the environmental, social and economic factors regarding the proposed project. The Applicant has submitted the project as proposed and has indicated a willingness to develop the site for a similar proposed density with an alternative recharge basin location and elimination of certain roadway lengths, as depicted in Alternative 3. The Town of Huntington Conservation Board's endorsement of the modified cluster design set forth in Alternative 3 is acknowledged.

During the preparation of the scope for the DEIS, the alternatives were determined to represent the range of reasonable development scenarios for the site, in consideration of the applicant's capabilities, as well as the applicable development restrictions of the Town and area land use pattern. It is not possible, practical or legally required to include every possible combination of use, yield and layout as alternatives.

6.6 Objections to Current Plan Based on the Yield Map

Comments C-1 and D-30:

These comments note that the proposed project is based upon the Yield Map, which results in fully-conforming lots which would allocate the bluff, Preserve and setback areas within four of the lots. Alternative 3, which had been the proposed plan in the initial submission of the current DEIS, would provide a greater amount of preservation and is therefore preferred by these commentators, though opposition to the range of alternatives presented in the DEIS is expressed.

Response:

The Yield Map, upon which the proposed project is based, was prepared to provide a legally-conforming site layout; the comment in support of Alternative 3 is acknowledged.

6.7 Open Space Index

Comment B-7:

"In 1974, this was put on the Open Space Index. It's one of the very few priority 1's that haven't received protection."



Response:

Section 6.1 of this document addresses the current status of potential public acquisition efforts, which is the mechanism by which the goal of the Open Space Index would be achieved.

Alternative 1 of the DEIS assumes the No Action alternative, which would represent a condition very similar in nature to that of a hypothetical "Public Acquisition" alternative; the only difference would be in respect to ownership of the site. It is anticipated that a public owner (the Town, County or a conservation group) would not physically disturb the site, as the reason for its acquisition in the first place is to not disturb the site or adjacent community.

It should be noted that if the site were developed privately, not only would the public not be burdened with debt to pay off the purchase price (based upon a mutually-agreeable market value), but the majority of the site's existing vegetation (approximately 70%) would still be retained, the area's real estate values would be increased (by the anticipated high market value of the new residences), and the amount of property taxes paid would be significantly increased (which would not be the case for public acquisition). Thus, public acquisition as recommended by the Open Space Index would not provide a set of benefits that, in their totality, would result if the proposed project were constructed.



SECTION 7.0

COMMUNITY SERVICES



7.0 COMMUNITY SERVICES

7.1 Recharge System Type, Capacity and Location

Comments B-19, B-20, B-21, C-7, C-8, C-11, C-13, C-14, C-15, C-27, C-28, D-13, D-15, D-28, D-33 and D-37:

These comments question the necessity for a recharge basin to serve the site in preference to leaching pools, and, if provided, the size, configuration and location for such a feature.

Response:

The proposed subdivision requires a recharge basin in the northeastern portion of the site to meet the drainage design requirements of the Town of Huntington (which include 150% storage capacity; see **Appendices C-3 and C-4**). Analysis of the amount of leaching pools necessary to achieve the Town of Huntington's requirements was evaluated during the DEIS process. The Town of Huntington Engineering Department requested that the recharge basin be utilized instead of leaching pools after reviewing the analysis. In addition, it was determined that a significant amount of vegetation would be required to be disturbed if leaching pools were utilized. The recharge basin will require excavation and establishment of sidewall slopes of 1:3 or less, per Town standards. The design is consistent with Town requirements and the proposed location is at a low point of the property in order to promote gravity flow of stormwater to this system. Alternatives that may have been considered in the past are not feasible as a result of the requirements of the Town Engineering Department. SEQRA only requires consideration of feasible alternatives.

It is acknowledged that a portion of precipitation may not enter the drainage system via surface runoff, but may remain on the west part of the site due to surface topography. Stormwater is expected to infiltrate into the ground due to the leaching qualities of surface soils. A slight potential for overland runoff may exist during extreme storm events. It is noted that such conditions presently exist with no upland drainage control. The introduction of roads with channelized drainage containment and conveyance systems to a recharge basin is expected to reduce overall overland flow within key drainage areas of the site. Any excess runoff is not expected to adversely affect the bluff face or bay due to the retention of a 125-foot wooded buffer adjacent to the bluff.

The recharge basin has been designed so that it will not intersect regional groundwater and therefore, will allow stormwater to percolate through the subsoils to the groundwater table. Soil borings and geologic cross sections included in the DEIS indicate that there are no impermeable barriers beneath the area of the subject property proposed for the recharge basin. As a result, it is expected that the recharge basin will function properly and will serve the stormwater needs of the subdivision in conformance with Town requirements. The recharge basin is situated such that it will lie adjacent to a road improved to Town highway specifications. This will allow access to the recharge basin for maintenance should it be necessary.

SECTION 8.0

CULTURAL RESOURCES



8.0 CULTURAL RESOURCES

8.1 Visual Impacts

Comments B-16, D-8 and D-21:

These comments express concern that there will be adverse visual impacts from the recharge basin, and from the higher elevation of the proposed units on lot #7 for neighbors to the south.

Response:

As per Town requirements, the recharge basin will be fenced and landscaped to minimize potential visual and aesthetic impacts to passing motorists, thereby minimizing potential for visual impact on the character of the community. Recharge basins are a standard feature for containment and recharge of stormwater throughout Long Island. Such stormwater containment systems are typical elements of residential housing communities.

The Preliminary Map indicates that the envelope for development in Lot #7 lies a minimum of 50 feet and a maximum of 250 feet from the site's southern property line. However, as this lot displays a downward slope to the south, it may be expected that the house to be built here would be located at or near the Peach Court South where the land surface is higher, in order to minimize the amount of earthwork required to provide a suitable surface for construction. This would also result in the maximization of the distance between this house and its neighbors to the south. The DEIS (Figure 2-7 and Appendix B-1) does not anticipate that any clearing will occur in this area; rather these figures show vegetated cover similar in density to the rest of the property. This can be ensured through grading plan review at the time of Building Permit issuance. Therefore, it may be expected that the significant distance between this home and neighbors to the south (in excess of 150 feet), in conjunction with the vegetated nature of this setback, will be sufficient to minimize the potential for adverse visual impact to these neighbors.

8.2 Community Character Impacts

Comments D-10, D-22 and D-25:

These comments express opposition to the project due to commentators' concerns that the project will impact the rural character of the community.

Response:

The proposed project is a low-density residential development on fully-conforming two-acre lots, similar to or less dense than the adjacent lots, with a Town-required recharge basin which will be located in the most logical and efficacious portion of the site for drainage purposes. The majority of the site will be retained in natural vegetation (70% or more). Thick belts of retained natural vegetation will be provided along all site boundaries, minimizing potential visual impact to neighbors or observers on North Creek Road. The project is not divergent from the land use patterns in the area, but is consistent and, in fact, characterized by a lower-intensity use than areas of adjacent use and zoning. Preservation areas will exist between North Creek Road and



the proposed development areas and, as a result of reduced density, wooded buffers and retention areas will be consistent with the character of the community.

The commentator does not justify his assertion that this proposal will in any way result in a *"drastic environmental impact in its effect on character of the community or neighborhood, introducing elements incompatible with rural atmosphere"*. With regard to paving of a portion of North Creek Road and the recharge basin, these features are required by the Town and are typical elements of a residential development. In addition, **Sections 5.1 and 7.1** of this document provide additional information and address these concerns.



SECTION 9.0

MISCELLANEOUS



9.0 MISCELLANEOUS

9.1 Consistency of Terminology for Preserved Areas

Comment C-16:

"The DEIS interchangeably uses terms to describe areas that will either be temporarily, partially or fully protected. These include Preserve Area, Dedicated Areas, 125-foot Non-Disturbance Setback Area, 125-foot Buffer, Reserve Area, Natural Buffer Area and Conservation Area. These areas (some of which overlap) need to be defined in an explanatory chart to indicate their differences and similarities. In some case the terms are contradictory, in others duplicative. A single term should be used for each area."

Response:

Term	Description of Term
125-Foot Setback (Proposed, Alt. 3)	1.43-acre area adjacent to and within 125 feet of the top of the bluff, within which demolition of existing dilapidated structures will occur and in which only brush removal is permitted to homeowners. Equivalent terms are: 125-foot Non-Disturbance Setback Area, 125-foot Building Setback, 125-foot Bluff Setback Area, 125-foot Buffer, 125-foot Buffer Setback, and 125-foot No-Build Zone
Natural Buffer Reserve Area (Hogan Plat)	3.4-acre privately-owned area to be protected by Conservation Easement and Restrictive Covenant; equivalent terms are: 3.4-acre Preserve Area, Reserved Area, Preserve Area, Reserve Area, Natural Buffer Area, and Conservation Area
Dedicated Areas	Lands to be offered to the Town of Huntington; includes recharge basin, internal roadway(s) ROW, and that portion of the North Creek Road ROW within the site
Beach Access	0.13-acre easement to HOA, within privately-owned Lot 4
North Creek Road Improvements	Improved to Town standards for the 1,100 feet which are within site

9.2 Plate Numbers

Comment C-31:

"Maps should be titled to include their respective Plate Numbers."

Response:

The four maps contained in folders at the rear of the DEIS were not assigned plate numbers; as each map was discussed in the text, it was referenced by its name as it appears in the Table of Contents and as it is titled.



9.3 Name of Property Owner on Plans

Comment C-9:

"The name of the property owner should be on all Alternative and Preliminary Maps."

Response:

As stated on the DEIS Cover Sheet, the names and address of the present owners of the project site are:

William Kollmer and Mary Ellen Curtis
22 North Creek Road
Eaton's Neck, NY 11768

The following 3 maps included in the DEIS have been revised to indicate the above: Preliminary Map (rev. 01/28/02), Alternate Layout/Alternative 2 (rev. 3/25/02) and Preliminary Map/Alternative 3 (rev. June, 2001).

9.4 Beach Access and Easement

Comments C-26 and D-43:

These comments request additional information as to the mechanism by which residents will access the beach, and whether the acreage of this access (estimated to be 0.13 acres) has been properly accounted for in the DEIS discussion of coverages.

Response:

The DEIS properly accounted for all of the physical coverages of the site, as listed in Table 1-1. The Preliminary Map indicates that there will be a 15-foot wide beach access easement, and not a separate tax lot, granted to an HOA, for the use of site residents to access the beach. The estimated 0.13 acres within the beach access easement are a part of Lot 4, and will not be under separate ownership. The owner of Lot 4 will be aware of the easements by recordation on the deed.

9.5 Taxes

Comments B-25 and D-36:

These comments indicate confusion as to the methodology whereby the tax revenues generated by the proposed project were calculated; an estimate of "less than \$200,000" is provided.

Response:

The commentator does not indicate from where he derives his estimate of "less than \$200,000" for total tax generation. The estimates for total tax generation given in the DEIS were derived as follows:



1. the applicant provided an estimated per-lot market value of between \$500,000 and \$1.2 million (see Section 1.1.2);
2. using an equalization rate of 2% (provided by the Town Assessor's Office), the total assessed value of the improvements (houses, yards, etc.) was obtained;
3. the actual tax bill for the site was referenced to obtain its land assessment (of \$24,200), which was then added to the above value for improvements assessment, to obtain the site's total assessed value;
4. applying the tax rates for the various individual taxing jurisdictions from the tax bill provided the individual taxes generated; two sets were obtained: one assuming a low estimate based on \$500,000 market value, and a higher set based on \$1.2 million per unit.

9.6 Survey and Topographic Map Errors

Comments B-27, D-6, D-41 and D-42:

These comments state that, as bluff erosion has been occurring continuously, the 1989 survey (on which the prior and current plans were based) is no longer accurate. As a result, the lot sizes proposed are not reflective of current site conditions. In addition, the topographic map is also questioned, as elevations of adjacent sites are not depicted accurately.

Response:

It should be noted that the survey indicates the boundaries of the site, which do not change on a short-term basis. In regard to the westerly property line, it is acknowledged that the bluff erodes over time, which would tend to require changes in the project layout, particularly the four lots which back onto the bluff. However, the position of the bluff face within the project site is not a factor in lot size calculations or mapping. Until such time that the bluff has advanced so far that conforming lots cannot be depicted in a Yield Map, the location of the bluff is independent of the lot lines. It is the locations of the site's boundaries that are utilized for lot line delineations.

The westerly property line is based on the mean high water mark of Huntington Bay where it meets the land surface of the site, which is occupied by a beach. It should be noted that, except for sea level rise associated with hypothesized global warming, the configuration of the beach will change only minimally on a short-term basis, so that it can be said that the westerly property line also changes, but at a slower longer-term rate than for bluff face recession.

In consideration of the above, while the bluff may no longer be located in the same exact position in 2002 as it was when mapped for the 1989 survey, the survey remains fully acceptable and adequate for mapping of the proposed subdivision. In addition, the topographic contours of the Preliminary Map are based upon current photogrammetry, which also render the map fully adequate and acceptable for the purposes to which it has been utilized.



9.7 Street Lights

Comment D-27:

"If this means street lights, consider the absurdity of lights glaring through the night in the heart of the forest, on a dead-end road and in a community that gets along without street lights. This is inconsistent with the considerable efforts already made by the Board to conserve the natural beauties of the site. On-house motion-sensitive lights would be a reasonable alternative."

Response:

As the internal roadways are required by the Town to be built to Town standards, Town review will determine the need for various improvements, including potential for streetlights. The comment is acknowledged and the Town may wish to consider this in making a determination.

9.8 Reduced Impacts from Reduced Yield

Comments B-8, B-9, D-2, D-3 and D-4:

These comments indicate opposition to any development of the site, due to adverse impacts; but note that these impacts wouldn't be reduced by reducing the number of lots.

Response:

This comment is acknowledged. The No Action alternative has been considered. Potential impacts from the proposed 10-lot project would be somewhat reduced from those of the prior-approved 22-lot plan. It should be noted that the same types of impact would occur for either plan; the difference in intensity of impact is due to the reduced number of units in the current proposal.

9.9 Second Vehicle Access

Comment D-26:

"But, see Pg S27; 'a second vehicle access cannot be provided as recommended by the Guidebook.'"

Response:

The Suffolk County Planning Commission recommends that a second vehicle access point be established; however, this is a "recommendation", not a requirement, as the Commission does not have discretionary authority in Subdivision design. The configuration and topography of the site, in combination with the Town requirement for an on-site recharge basin, results in an inability to provide a second vehicle access point. The project involves only 10 lots and as a result, there is little need to provide additional access. The proposed subdivision plan provides a means of safe and efficient access to and from the site.

APPENDICES



APPENDIX A

**HUNTINGTON TOWN PLANNING BOARD
RESOLUTION ACCEPTING DEIS**

April 3, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

HUNTINGTON TOWN PLANNING BOARD

MEETING OF APRIL 3, 2002

The following resolution was offered by M. Sommer

and seconded by W.G. Asher

WHEREAS, WILLIAM KOLLMER and MARY ELLEN CURTIS, 22 North Creek Road, Eatons Neck, New York, 11768, owners of fee title to land and WILLIAM KOLLMER CONTRACTING, LTD., 22 North Creek Road, Eatons Neck, New York, 11768 applicant under contract, have submitted a subdivision application for the **OLD ORCHARD WOODS** property, prepared by Nelson and Pope, LLP, and located at the easterly terminus of North Creek Road in Eatons Neck, bordered by the Long Island Sound to the west and the Village of Asharoken to the east, designated as parcel 0400-001-01-004.1 on the Suffolk County Tax Map, and

WHEREAS, said preliminary application and a Draft Environmental Impact Statement (DEIS) was received on July 27, 2001, for the subdivision of a 24.21 acre property into ten (10) lots, zoned R-80 Residential, and was classified an **Unlisted Action**, and

WHEREAS, on the applicant's own motion the proposed action was revised as reflected in the preliminary map received on February 5, 2002, and

WHEREAS, the Huntington Town Planning Board determined that significant environmental impacts may result from the implementation of the proposed plan, and issued a Positive Declaration on March 20, 2002, and

WHEREAS, a revised DEIS, dated March 2002 was submitted in response to Planning Board concerns contained in the Positive Declaration, and

WHEREAS, upon review, the revised DEIS was determined to be satisfactory with regard to its scope, content and adequacy for the purpose of commencing the State Environmental Quality Review Act (SEQRA) hearing, now therefore be it

RESOLVED, that the Planning Board of the Town of Huntington finds that the Draft Environmental Impact Statement for Old Orchard Woods, received July 2001 and amended March 2002 is **acceptable for public review**, and directs that a Notice of Completion of the DEIS and Notice of Hearing and copies of the Draft Environmental Impact Statement be filed with the appropriate agencies by the Environmental Review Division of the Department of Planning and Environment in accordance with SEQRA 617.12, and be it further

RESOLVED, that the Planning Board hereby sets the date of the SEQRA hearing on April 24, 2002 which is the same date as the public hearing on the preliminary application.

VOTE: 5

ABSENT: J. Tane

AYES: 5

W.G. Asher, B.B. Ohlig, J. Tane

L.A. Santoianni, M. Sommer

NOES: 0

The resolution was thereupon declared to be duly adopted.

APPENDIX B

TRANSCRIPT OF PUBLIC HEARING

Huntington Town Planning Board

April 24, 2002



1
2
3
4
5
6
7 HEARING BY AND BEFORE THE PLANNING BOARD OF THE
8 TOWN OF HUNTINGTON IN THE MATTER OF THE
9 APPLICATION OF OLD ORCHARD WOODS, HELD ON THE
10 24TH DAY OF APRIL, 2002 AT 11:00 P.M. AT TOWN
11 HALL, 100 MAIN STREET, HUNTINGTON, NEW YORK.
12

13 BOARD MEMBERS:

14 MITCHEL SOMMER, Acting Chairman

15 W. G. ASHER

16 AVRUM ROSEN

17 BARBARA BAYNE OHLIG

18 LORRAINE A. SANTOIANNI
19
20
21
22
23
24
25

ORIGINAL

1
2 ALSO PRESENT:

3 RICHARD MACHTAY, Director of Planning

4 MARION IOVINO, Secretary to Planning Board

5 RIEGER, WALSH & MCGINITY, ESQS.

6 Attorneys for Applicant

7 199 Main Street

8 Northport, New York 11768

9 BY: JOHN T. RIEGER, ESQ.

1 (THE HEARING WAS CALLED TO ORDER BY THE
2 ACTING CHAIRMAN, MITCHEL SOMMER, AT
3 10:25 P.M.)
4

5 MR. SOMMER: Will the applicant or applicant's
6 representative please come down?

7 MR. RIEGER: Good evening, Mr. Chairman,
8 members of the Board. John Rieger from the
9 firm of Rieger, Walsh & McGinity; 199 Main
10 Street, Northport, representing the
11 applicant and also the owners, Mr. and Mrs.
12 Curtis.

13 This is an application which first
14 was presented to this Planning Board quite a
15 long time ago, has gone through preliminary
16 subdivision approval of a twenty-two lot
17 subdivision. Actually, the original
18 application existed before my fourth
19 daughter was born. She's now three and a
20 half years old.

21 The extensive DEIS that was
22 performed there and FEIS was approved and
23 adopted. It received preliminary approval
24 by this board. Subsequent to that, the Town
25 Board upzoned the property to R-80, two acre

1 zoning. The property now before you is
2 actually being presented to conform to the
3 R-80. The yield will be ten lots on two
4 acre parcels.
5

6 The twenty-four acres is divided
7 into the ten lots and the application in
8 front of you is the map to the left, the
9 proposed map. The map to the right is also
10 a proposed plan which is the result of
11 having met with the planning staff and Board
12 and also taking into consideration this
13 board's and Town Board's concern that
14 perhaps a modified cluster development of
15 the ten lots would further preserve open
16 space on the property, and that is what it's
17 intended to do.

18 The application before you is,
19 however, for the ten lots, two acre
20 subdivision on the left. The applicant has
21 no objections; in fact, because of the
22 additional open space preserved and other
23 attributes that are beneficial to the
24 property, would be willing to work with the
25 Planning Board and staff in adopting the

1 Alternative 3 that is in your DEIS.

2 If you look at Table 6.1 you can
3 see the considerable -- when you compare the
4 Alternative 3 to the proposed action, you
5 then juxtapose that against the twenty-two
6 lot subdivision that had already been
7 approved by this board and passed muster
8 under SEQR, you will see the significant
9 mitigation of environmental issues that have
10 been addressed back there.

11 Given the late hour, I think the
12 plan before you speaks for itself. We do
13 have available from Nelson & Pope Mr. Phil
14 Maloki and Victor Burt, who appeared early
15 in the evening, to talk about the plan
16 before you, or alternative should you have
17 any questions.

18 This is a duly conforming map. We
19 request that it receive preliminary
20 approval. If you don't have any questions,
21 I will turn the mike over to the numerous
22 people here to speak on this application.

23
24 MR. KARPEN: My name is Daniel Karpen. I
25 reside at 3 Harbor Hill Drive, Huntington.

1 I have received in the last two weeks the
2 Pine Barrens Society newsletter. And in it
3 is a summary of the Grandifolia Hills
4 decision by the Appellate Court. The State
5 of Appeals Court overturned the Riverhead
6 Town Board's February, 2000 approval of the
7 Traditional Links mega-golf resort. The
8 ruling was unanimous, reversing a lower
9 court decision.

10 The court ruled that the Town
11 Board considered only the environmental
12 impacts from the golf course, despite the
13 proposal to build up to three hundred
14 thirty-three houses in conjunction with the
15 course. The court also declared that the
16 Town failed to -- the Town violated the
17 State Environmental Quality Review Act by
18 neglecting to consider preservation of the
19 property, despite it being the number one
20 target of acquisition of the Greenways
21 program.

22 I have not been able to, because
23 of time restraints, to obtain a copy of the
24 court decision. I think that everyone on
25

1 the Board should read it. The Holden
2 property is probably one of the top
3 priorities for preservation in the Town of
4 Huntington. The Planning Board has to
5 figure out, based upon the Grandifolia
6 Sandhills decision, how to preserve the
7 property because it's of ecological
8 significance. That is a charge that is
9 going to be brought upon you from the
10 Grandifolia Sandhills decision.
11

12 I have walked across north creek,
13 along North Creek Road. The property is one
14 of the most magnificent examples of hardwood
15 timber in the eastern United States. I
16 heard comments from residents earlier that
17 the black oak trees on the property are up
18 to two hundred years old. I confirmed it.
19 I have a degree in forestry from the
20 University of Washington. They're up to a
21 hundred fifty feet tall, four foot diameter.

22 When I was seven and a half years,
23 old my parents moved into a house they built
24 in Lloyd Harbor. There was a tulip tree in
25 the front yard next to the driveway they

B-1
6.1

1 attempted to save. Cutting the roots killed
2 the tree within one year after the house was
3 built. Tulip trees are incredibly sensitive
4 to disturbance. If you build on this
5 property you will probably end up killing
6 most of the trees. You will essentially
7 decimate the ecosystem.

B-2
4.2

8 You have to figure out how you're
9 going to preserve this property. You can
10 recommend to the Town Board, as part of the
11 final EIS because of the ecological
12 significance and the precedent set in the
13 Grandifolia Sandhills decision, that the
14 Town Board has to preserve this property for
15 this and all future generations. Thank you.

B-3
6.1

16 (APPLAUSE)

17 MS. ALTNER:

18 My name is Joanie Altner; 9
19 Argyle Drive. Well, I feel much better
20 about standing before you since I sat and
21 listened to the Gilbert Plat because you are
22 very interested in the environmental impacts
23 for that subject property. And folks, it
24 doesn't get any more of an impact than this
25 one. In the Environmental Impact Statement

B-4
4.2

1 under "wildlife" it says several species of
2 special concern exist on the subject site,
3 eastern hog nose snake, worm snake, spotted
4 salamander, sawed eared hawk. The subject
5 site is part of a wildlife corner.
6

7 You were talking about trees. In
8 a best case scenario there will be three
9 hundred eighty trees lost. And before you
10 were discussing eleven. I'm not trying to
11 minimize the other piece of property, but
12 the significance is not just to a
13 neighborhood, it's to the entire town. The
14 loss of this property has ramifications
15 beyond our generation.

16 Maybe it's best said in somebody
17 else's words. Senior Environmental Analyst
18 Margot Miles, August 17, 2000 filled out a
19 form nominating this property, along with
20 several adjacent properties to the state.
21 And she said that parcel is vulnerable,
22 pending submission. Talking about this
23 project makes this parcel vulnerable. It
24 says, "Is this subject resource of statewide
25 importance," and she answered "yes." Sure

B-5
4.2

1 access, exceptional biological and natural
2 areas. "These open spaces protect the view
3 from the water aesthetics of the
4 neighborhood, and serve scenic ecological
5 and quality of life purposes."

6
7 One of the other things that they
8 say in their environmental impact statement
9 is the displacement of the animals. They
10 will be able to use the surrounding areas.
11 The surrounding areas are not within your
12 jurisdiction. The adjacent wooded area is
13 part of the Incorporated Village of
14 Asharoken. You can't ensure that the
15 surrounding areas will be a habitat after
16 the loss of this habitat for animals in the
17 future because it's not within your
18 jurisdiction. This is within your
19 jurisdiction.

20 In 1974, this was put on the Open
21 Space Index. It's one of the very few
22 priority 1's that haven't received
23 protection. This is within your purview to
24 stop building on this property. The
25 environmental impacts are significant. You

B-6
4.2

B-7
6.7

B-8
9.8

1
2 had them before you since 1999; they haven't
3 changed. Making it into ten lots doesn't
4 change the impacts. You can stop this and
5 you should. Thank you.

6 (APPLAUSE)

7 MS. BALMIN:

8 Good evening. My name is
9 Christine Balmin. I live at 24 Essex Drive.
10 I live within about five feet of the
11 property. I just wanted to also mention
12 that Joanie Altner is a board member of the
13 Property Owners of Eatons Neck. I'm
14 immediate past president of the Property
15 Owners of Eatons Neck; been on the Board the
16 past four years. We represent approximately
17 five hundred homeowners and I submitted
18 petitions in the past to both you and the
19 Town of Huntington.

20 We're here for the third time in
21 four years addressing a plan, which although
22 slightly different, will have the same
23 negative impact on the flora and fauna and
24 topography. The conclusions of the previous
25 Draft Environmental Statement and current
Environmental Impact Statement show the

B-9
9.8

1 proposed project will result in adverse
2 environmental impacts and these include --
3 this is a quotation from them -- "loss of
4 open space and visual resources, removal of
5 native oak and tulip forests, permanent
6 alteration of the natural topography,
7 displacement and loss of wildlife species,
8 increase in sanitary flows, potential for
9 future shoreline and hardening of bluffs and
10 subsequent loss of sand to beaches
11 adjoining, and downdrift of the site.
12 Positive storm water overflow of the
13 properties in the Village of Asharoken and
14 Eastons Neck, storm water flows on landscape
15 surfaces, increase in the number of
16 residents and demand for community services,
17 temporary increase in construction traffic,
18 fugitive dust and noise during construction.
19 Possible increase in traffic along the
20 intersection of North Creek and Eaton's Neck
21 Road," which actually can be pretty
22 hazardous.
23

24 Adverse impacts that cannot be
25 avoided include the increase in sanitary

1 flows, potential for sewage runoff mixing
2 with recreational water are impacts we have
3 discussed in the past. And to quickly
4 summarize and make it easier for you -- I
5 handed in some pretty technical stuff in the
6 past -- the studies that were done show the
7 biohazards from mixing such septic systems.
8 The studies published in June of 1999 in the
9 Journal of Clinical Microbiology show
10 transference of H. pylori, that's the
11 bacteria implicated in gastroesophageal
12 disease, gastritis and some gastric
13 carcinomas from septic leakage to
14 recreational water. Additional incidences
15 of contamination and their consequences are
16 documented in parts of Milwaukee, which is
17 cryptosporidium.

18
19 There are very real possibilities,
20 especially in a situation --

21 MR. SOMMER: (INTERPOSING) Excuse me. For the
22 benefit of our court reporter, could you
23 slow down?

24 MS. BALMIN: Sure. I wrote some of these
25 things down since in the past there has been.

B-10
3.1

1 leakage.

2 The applicant does not anticipate
3 the standard waste water design to be
4 exceeded, yet the houses will have between
5 four to five bedrooms. The concern of
6 nitrogens in the subsurface waters is
7 related to the presence of a discontinuous
8 layer beneath the project site, potentially
9 resulting in discharges of water along the
10 bluff face impacted by septic waste. There
11 is one limited location on the property
12 where impermeable clay exists approximately
13 seventy feet below the ground surface. This
14 has been documented in other portions of the
15 property approximately forty feet below
16 grade. The deep gray layer is restricted to
17 the western part of the property and is the
18 reason why seepage is detected on the
19 western base of the bluff.

20 Effluent will leach to the water
21 table and become part of the groundwater
22 reserve. Again quoting, "seepage that has
23 been observed along the bluff face is
24 believed to be the result of perched water
25

B-14
3.1

1 conditions that lie within the hundred to
2 two hundred foot area along the western
3 portion of the property." In addition,
4 "analysis of the data generated from the
5 geological borings collected on the site
6 indicate that the discontinuous clay layer
7 may slope away from the bluff face."
8

9 There are a lot of suppositions in
10 the statement. Based on these statements in
11 the DEIS, the extent, slope and effect of
12 the clay layer have not been determined.
13 There cannot be a clear conclusion regarding
14 potential for extensive effluent leakage and
15 the stabilization of the bluff.

16 The inability of the DEIS to
17 placate these concerns further reinforces
18 the position of the Huntington Conservation
19 Board. The Huntington Conservation Board
20 has unanimously opposed the development; in
21 fact, it's probably the first time in their
22 history they unanimously opposed anything.
23 Obviously, there are great concerns from a
24 conservation point of view.

25 Additionally, the DEC has listed

B-1
6.

1
2 this property to be considered in their
3 preservation efforts. I attended a DEC
4 meeting in November where I saw the property
5 listed. The Suffolk County Legislature has
6 taken the introductory steps to preserve the
7 land. The Town of Huntington has been
8 instrumental in their support for our
9 concerns, environmental concerns.

10 As the immediate past president of
11 the POAB, I know how our community feels.
12 They have adamantly opposed the development
13 and worked very hard to do anything they can
14 possibly do to support preservation. In
15 November, the number of residents from
16 Eatons Neck, Asharoken and Northport that
17 have written, phoned or spoke was enormous.
18 In fact, the Suffolk County legislators were
19 overwhelmed by the support of our
20 communities.

21 There is serious concern by three
22 bodies of government, three different
23 communities, environmentalists regarding
24 this project proposal as it stands. The
25 Planning Board should recognize that the

1
2 Huntington Town Board established the zoning
3 of the property as two acres. Any
4 discussion or acceptance of submissions,
5 maps or any of the materials relating to
6 R-20 zoning may, in fact, jeopardize the
7 R-80 zoning and should be dismissed in their
8 entirety.

9 This also has been discussed
10 twice. It's gone twice to court. Public
11 opinion has not changed. Facts have not
12 changed. This property has many issues
13 concerning development and therefore should
14 be allowed to remain in its pristine state
15 as parkland. Please do all you can to help
16 us. Thank you.

17 MR. MACHTAY: May I? The names of
18 microorganisms roll off your tongue very
19 easily.

20 MS. BALMIN: I'm a microbiologist. I worked at
21 Cornell for eight years and Northport and I
22 worked for Bristol-Myers Squibb. I'm
23 presently retired. I mentioned in the
24 opening comments I didn't want to
25 overemphasize. I usually supply a whole

1
2 parcel.

3 MR. SOMMER: As I indicated earlier, we will
4 take submissions for ten days after this
5 date. I know that at the prior hearing, now
6 some, I guess it's three and a half, four
7 years almost, your civic association had
8 submitted documentation, I believe, also at
9 a Town Board hearing on the change of zone.
10 Since we have new members of the Planning
11 Board, I respectfully request that if you so
12 see fit, that you resubmit it for our
13 consideration.

14 MS. BALMIN: Same reports?

15 MR. SOMMER: Same reports and comments with
16 respect to how this particular plan changes
17 the protection of the bluff and bluff
18 stabilization. We would appreciate your
19 comments on that.

20 MS. BALMIN: Thank you.

21 DR. FABER: Dr. Delores Faber; 7 Stargazer
22 Court, Eatons Neck, a member of the North
23 Creek Homes Association and President of the
24 Stargazer Home Association. I see a lot of
25 new faces here. I don't know if you have

B-16
8.1

1
2 ever walked or ridden down North Creek Road.

3 If you had, you would know that the
4 character of this area does not call for a
5 recharge basin.

6 If this plan goes through, I just
7 want to point out that I understand that the
8 local engineers have informed me that ten
9 homes do not mandate the construction of a
10 recharge basin in this environment. It
11 would be a visual blight. Not just to the
12 people who live on North Creek Road, but to
13 the potential buyers of the proposed ten
14 homes.

15 It is my understanding that the
16 decision to construct a recharge basin as
17 opposed to leaching pools is really left to
18 the discretion of the Town Engineer. If
19 this plan should go through, I'm requesting
20 that the Town Engineer demand construction
21 of leaching pools and not allow the visual
22 blight of a recharge basin on this property.
23 Thank you.

24 MR. SOMMER: Anybody else wish to be heard?

25 Yes, sir.

1
2 MR. BUTLER:

3 Bill Butler. I lived for
4 thirty-six years at 48 North Creek Road,
5 which is about three hundred feet north of
6 the subject property. I commend the Board
7 for your diligence in making progress on
8 this. I urge you to keep up the good work.

9 The textbook, Environmental Impact
10 Review in New York, by Professors Gerard,
11 Rozow and Weinberg has an interesting
12 comment. Court of Appeals versus New York
13 Urban Corporation. "Environment is defined
14 broadly to include land, air, water, flora,
15 fauna, noise, objects of historic or
16 aesthetic significance, historic pattern of
17 population, pattern of growth or
18 neighborhood character. " Neighborhood
19 character is right up there co-equal with
20 all the other considerations.

21 The text section quotes another
22 decision of the Board of Appeals. "Decision
23 makers, enlightened by public comment where
24 appropriate, will identify and focus on any
25 environmental impact. They will minimize
adverse environmental effects to the maximum

1
2 extent practicable and then articulate the
3 basis for their decision."

4 In the text at Section 5.14, the
5 professors state DEC regulations require an
6 Environmental Impact Statement to include "a
7 description and evaluation of the range of
8 reasonable alternatives to the action."
9 Also Section 1.03, the professors say that,
10 "The DEC has noted that the essence of
11 environmental review is to search beyond the
12 applicant's given state of facts. SEQRA
13 requires the agency to discover the truth."

14 Section 2.06, the professors say,
15 "Failure to identify an environmental
16 effect, even if its relative significance is
17 not certain, can result in an agency's
18 action being annulled."

19 Where do we stand with this DEIS?
20 For the record, I believe it's deficient
21 throughout, but I will not take up your time
22 with all of the problems. One example, the
23 report says that the intersection of North
24 Creek Road and Eaton's Neck Road, coming
25 from the southwest, there is a sight

B-17
5.2

1 distance of a hundred forty feet, and the
2 speed limit being twenty miles an hour, the
3 stopping distance is a hundred twenty-five
4 feet. And therefore the DEIS says the sight
5 distance is satisfied. The problem is the
6 speed limit is thirty. This section is
7 based on a falsehood.
8

9 As to the internal roadway, we
10 have the thirty-seven feet of pavement on a
11 short dead-end piece of road that will serve
12 ten families, all of whom will be provided
13 with off street parking. How do you get
14 there? When you leave Ocean Avenue at the
15 LILCO stacks you travel a two lane road for
16 four point seven miles on two lane roads to
17 the site. When you get to the end,
18 dead-end, suddenly we have thirty-seven
19 feet. Does this make sense? This section
20 is based on a thoughtless bureaucratic
21 application of a standard.

22 The extended roadway proposal is
23 to install thirty-seven foot of pavement
24 eleven hundred foot north of the entrance to
25 the development. As I recall, there was a

B-11
5.1

comment that they could avoid having a hiatus between two developments. The property north of the site was fully developed fifty, sixty years ago. There is no development up there. This section is based on a misunderstanding.

I would also like you to note that the DEIS states, Section S2, "The recharge basin has no potential for significant environmental impacts." You have the duty to determine the truth to determine the truth. I'm not going to discuss about the engineering advice, but I'm confident to tell you there are alternatives.

You may note that the applicant and his consultant in the first proposal that was made in the previous proceeding apparently anticipated that sump directly on North Creek Road would raise the problem of environmental impact. As a result, the first plan took the sump in behind the rise and then down into the ground to where he wouldn't see it. What does the law say? Minimize adverse environmental effects to

1 the maximum extent practicable. The
2 applicant tried to do this. We have an
3 agency that said generally put something in
4 a lower spot. Does generally apply? In an
5 extraordinary situation, does generally
6 apply when it creates a drastic particular
7 environmental change?
8

9 I would like you to recall that
10 the letter to you from the Conservation
11 Committee stated, "There may be other
12 alternatives that can be even more
13 protective. I'd like you to note there was
14 an addendum to the Final Environmental
15 Impact Statement in the previous proceeding
16 that stated eliminating the sump would
17 preserve approximately an additional fifteen
18 percent. It also says that, "It is
19 generally agreed an approximate forest cover
20 of approximately 65% percent is the minimum
21 to provide the benefits associated with
22 urban forest habitate."
23

24 I would like you to take note of a
25 letter from the Village of Asharoken,
November 24, 1999 addressed to the Director

1 of Planning. "The North Creek area is
2 unique, with a dirt road which meanders
3 along a gully. Widening the paved portion
4 of North Creek Road from the southern
5 terminus at Eaton's Neck Road to the
6 entrance to the development is excessive and
7 would ruin the aesthetics of the area. The
8 added width only serves to exacerbate the
9 water runoff problem." The letter goes on
10 to say that, "The recommended recharge basin
11 in the southeast portion of the subdivision
12 is the least offense from a visual
13 standpoint. Careful attention should be
14 given to the landscape plan that hides the
15 basin to the greatest extent possible."

16 Now for the sump. This is a
17 pretty big impact. This is apparently the
18 result of a recommendation from the Town
19 Engineer. We generally put it in the lowest
20 place. From the records I accessed, I
21 cannot find if this was ever given a second
22 thought. I looked up a description on the
23 Town's Web site. It doesn't say anything
24 about worrying about the environment. The
25

B-19
7.'

1 same thing goes for the Highway Department.
2 For the Planning Board to accept
3 recommendations from agencies which are
4 inferior in this regard, as if they were
5 commandments, would be an abdication of your
6 authority and your responsibility.
7

8 Why is this important? Every time
9 you mandate pavement you are creating a
10 runoff problem, which in turn necessitates a
11 sump, and which in turn affects the
12 character of the neighborhood. I think you
13 have to work backwards. We have to get rid
14 of the sump. Therefore, we have to reduce
15 the runoff, therefore we have to minimize
16 the pavement. This is not rocket science.

17 Incidentally, take a look at the
18 calculations. DEIS Section 1.3.6, "Based on
19 town standards, the proposal must provide
20 for the minimum of a hundred fifty-seven
21 thousand and eighty-two cubic feet." Where
22 did this come from? I find in your
23 department handbook, Subdivision Regulations,
24 Page 26, Residential A Zoning, in the column
25 for hilly terrain, the requirement is four

B-20
7.1

1
2 thousand. Below it says this must be
3 increased by fifty percent, so we have six
4 thousand five hundred ten cubic feet.

5 THE FLOOR: Square feet.

6 MR. BUTLER: The expert handbook does not say
7 whether you're dealing with bare lands,
8 scrub, parking lot or forest. It has to be
9 taken as a rule of thumb. We have a six
10 thousand five hundred ten cubic feet per
11 acre. How did I get the sum? I multiplied
12 by the acreage. However, the topographic
13 map shows that all of the property west of
14 the north-south section drains to the
15 northwest, to the west, to the southwest to
16 the south. That constitutes, by eyeball,
17 approximately fifty percent of the
18 property. Will somebody tell me if this
19 calculation makes any sense?

20 There was a letter from Asharoken
21 dated September 30, 1998 which stated, "Is
22 there perhaps an alternative solution to
23 avoid this visual blight on an otherwise
24 unique and beautiful section." The Village
25 went on to say as to this extended roadway,

1
2 "We recommend the North Creek Road from
3 Apple Place northward be paved to Huntington
4 Town standard with regard to construction
5 but not width. Sixteen feet is more than
6 adequate to handle the traffic without
7 ruining the aesthetics." The writer,
8 Chairman of the Planning Department for the
9 Village, is an engineer.

10 We should also note the DEIS
11 refers to the guidebook of the Suffolk
12 County Planning Commission where it says,
13 "The commission also encourages the use of
14 innovative storm water disposal techniques
15 utilizing natural features of the site and
16 free form design."

17 Alternatives. The heart of the
18 SEQR law; I don't find anything. Where are
19 the alternatives to the sump? Where are all
20 the alternatives to the excess pavement? Do
21 they tell you we can do it this way or that
22 way? The DEIS is deficient in failing to
23 address genuine alternatives. I urge you to
24 exercise your superior authority and
25 responsibility and should not refer to the

B-21
7.1

1 Town Engineer for further advice. I would
2 ask you to say to him don't tell me you
3 can't do it, tell me how you're going to do
4 it. Thank you.
5

6 MR. LIEBERMAN: David Lieberman, I live at 12
7 North Creek Road, just down the street from
8 where this is going to occur. I'd like to
9 address mostly the Draft Environmental
10 Impact Statement, which is pretty much a
11 copy of the Final Environmental Impact
12 Statement previously submitted and accepted
13 by the previous Planning Board, and its
14 flaws. The first is that it's basically the
15 same as the last one, so it has all the
16 flaws of the last one.

17 There are some new things that
18 need to be addressed. Firstly, on the first
19 page of the summary in this particular
20 Environmental Impact Statement it talks
21 about what happened in '88 and '89 when the
22 Hogan property was first subdivided. In the
23 previous Final Environmental Impact
24 Statement it talks about how the land was
25 subdivided and all of this makes no mention

B-22
6.5

1
2 of the fact that cluster housing was
3 advocated for future subdivision. Yet in
4 this Draft Environmental Impact Statement,
5 that statement now appears.

6 Was that purposely omitted from
7 the previous Final Environmental Impact
8 Statement? Is that something that somebody
9 just discovered recently? It appears that
10 there seems to be a small problem since if
11 cluster was advocated, why was no
12 alternative with cluster accepted? In fact,
13 when it was proposed by the Planning
14 Department, it was violently opposed and
15 forced to be rejected from the previous
16 Environmental Impact Statement. In fact, it
17 does not exist as an alternative here,
18 although it says that future subdivision
19 cluster would be advocated.

20 I don't call this a cluster. What
21 this does is put six houses on the bluff
22 instead of four houses on the bluff, which,
23 in fact, puts more stress on the bluff, not
24 less. I don't see how that is much of an
25 alternative.

B-2
6.5

1
2 Although I don't want to address
3 some of the things that are written here, I
4 think somebody ought to put it on the
5 record. There are all kinds of references
6 in this Draft Environmental Impact Statement
7 about preserving rights of the developer and
8 how he really thinks it ought to be R-20 and
9 all this, and R-80 is out of character. I
10 should mention that first of all, the
11 property adjacent to this property is zoned
12 R-80 and has been that the majority of the
13 property in Eatons Neck is zoned R-80 by
14 area. An argument, well, there is R-20 next
15 door, that means that they ought to all be
16 R-20 and the R-20's that have R-10's next
17 door ought to be R-5 and that means we ought
18 to make all of Eatons Neck R-5's just
19 because there are a few houses that are R-5.

20 There is also a statement about
21 how much money the Town is going to get from
22 the property, but the calculation doesn't
23 seem to say how they're going to figure it
24 out. That each house is worth tax revenue
25 of thirty-seven thousand eight hundred and

B-24
6.4

B-25
9.5

1 sixty-five dollars and sixty cents. Even at
2 one point two million dollars in value, that
3 would not equate to thirty-seven thousand
4 eight hundred sixty-five dollars per
5 house, so; errors.

6
7 How many other errors are there in
8 this Draft Environmental Impact Statement?
9 Well, there were ten bore holes done on the
10 site. We have a clay layer that is
11 supposedly discontinuous, but it appears on
12 one of the lots. There is only one bore
13 hole on that lot. Is that discontinuous
14 clay layer discontinuous on that lot? We
15 don't know. In fact, it could be
16 discontinuous on the whole lot. In which
17 case, if you put a cesspool in, it reaches
18 right out the bluff right into the Sound.

19 If I were doing the Environmental
20 Impact Statement I would check it out. I
21 know it costs a few dollars to put in a few
22 more bore holes, but I would really want to
23 know exactly what the layer looks like. You
24 have twenty-four acres, you put in ten bore
25 holes and you tell me you know exactly what

B-26
3.1

1 the topography is underneath the ground. ↑

2
3 But I'll tell you something even
4 more interesting. These surveys were done
5 1989. They assume that the lot is exactly
6 the same now as it was in 1989. Let me show
7 you a picture, a picture on Page 225. Shows
8 in red, the boundary, the supposed boundary
9 of the property. Then it has a lump of
10 property inside which it calls a marine
11 intertidal gravel sand beach. What does
12 intertidal mean? It means that mean high
13 tide, it's under water. My understanding is
14 if it's under water at mean high tide, it
15 doesn't belong to them. If that land
16 doesn't belong to them, then their property
17 isn't twenty-four point two one acres
18 because that land is part of the Long Island
19 Sound. No mention of this was done in the
20 previous Final Environmental Impact
21 Statement. Nothing was done here about it.
22 If that land is no longer theirs,
23 then the lots on the bluff are nonconforming
24 because they're not two acres because the
25 bluff ends where the tide comes in and it's ↓

B-27
9.6

1 short. In fact, they would be happy to know
2 that all this erosion they talk about in the
3 last few years has taken place on the bottom
4 of the bluff, not on the top of the bluff.
5 As least as far as I can discern. If they
6 let me on the property I could take better
7 measurements.
8

9 But the one point nine feet per
10 year that they're losing is at the bottom of
11 the bluff, and when they lose it at the
12 bottom of the bluff, everything gets washed
13 away. That means they're losing property at
14 the rate of one point nine feet per year if
15 you accept their figures. So we have a
16 survey of a piece of property that is
17 thirteen years old, never been redone, yet
18 we know that the property lines might be
19 changing. Doesn't it behoove this board to
20 require that they have an up-to-date
21 survey?

22 Now there is also this problem of
23 bluff recession. They say for a long time,
24 it was receding at an average of one
25 point-o-nine feet a year. Then there was a

B-2
2.

1 gap and they made some more measurements and
2 they got one point nine for twenty years,
3 '76 to '96. Then they say well, use the one
4 point nine as a conservative estimate, but
5 it might shift back to one point-o-nine.
6 Who knows?

7 Well, if I just take averages it
8 doesn't do me much good. I mean, let's see,
9 from the time I was born to the time I was
10 twenty I probably averaged about two
11 thousand dollars that year in income. From
12 the time I was twenty to thirty, I probably
13 averaged twelve thousand dollars a year. I
14 was a graduate student. Does that mean that
15 you could guesstimate what my income was
16 going to be when I was forty years old if I
17 relied upon those two averages?

18 I teach my students that you make
19 plots, you fit data to curves, you don't
20 draw straight lines with just two points.
21 They should have done a more detailed study
22 of the erosion rates so they could make some
23 plots so they could make some fairly
24 educated guesses as to what the erosion
25

1 rates are going to be in the future.

2 We all know that the two warmest
3 years in history were between 1996 and 2002
4 -- I think it's 1998 and 2001. Sea level is
5 rising. On the average, global warming
6 should produce more frequent, more severe
7 storms, so erosion rates and loss of
8 property from that site should increase with
9 time not decrease.

10
11 Now, they don't address building
12 bulkheads. They say we will leave it to the
13 homeowners in the future. Let's say that I
14 was wrong and right now they had it exactly
15 right, which I tell you they don't. Let's
16 say you have lots of exactly two acres. In
17 a year they lose one point nine feet along
18 their shoreline. They're not two acres any
19 more. They're now nonconforming.

20 Now the homeowner has a house
21 built; they move in. The lot is
22 nonconforming. Now they want to build a
23 bulkhead. Now they have the problem that
24 they have a nonconforming lot that they want
25 to get permits for. This is not addressed

B-29
2.2

1
2 in the statement. These twenty-four point
3 two one acres, there's one point five one
4 acres of recharge basin, two point seven
5 acres of roads, twenty acres for the lots --
6 oh, and if I calculated it correctly, about
7 point one three acres for the deeded access
8 to the beach.

9 There's going to be a deeded
10 access, a separate deed. They did it in
11 here. It's going to be a yield access. It
12 doesn't appear as a separate deed on here.
13 It looks like it appears as an easement on
14 here, but that is not what it says in the
15 statement. Where is the one point three
16 acres -- point one three acres? We're point
17 one three acres short. Even if the beach
18 didn't wash away between the quarter and
19 three quarters of an acre in this 1989
20 survey, they're still point one three acres
21 short because they didn't put in this deeded
22 beach access.

23 Speaking to alternatives, Bill
24 Butler mentioned no alternative to the
25 recharge basin. I mention no alternative to

B-30
6.5

1 the cluster housing that was advocated when ↑
2 the land was originally subdivided. Bill
3 mentioned that they got the speed limit
4 wrong. There is a twenty mile an hour curve
5 that ends before I reach North Creek Road,
6 which means after they go around the curve
7 they can speed up to thirty. So the speed
8 limit on both sides of North Creek Road is
9 thirty miles an hour. There is limited
10 sight distance on both sides. So addressing
11 it on one side and not the other is a
12 mistake.
13

B-31
5.2

14 There is talk of widening North
15 Creek Road on the already paved section of
16 land, that the Town has bonded for it, and
17 it was done back in 1988. Well, I'm pretty
18 sure that at most, one of the homeowners of
19 North Creek Road in the paved section lived
20 there in 1988. Everyone else is new and
21 when they brought the houses they had no
22 idea that somebody is going to widen the
23 road another ten feet. It seems to me that
24 a decision made in 1988 needs to be
25 considered again rather than suppose it's ↓

B-31
5.1

1
2 again going to occur since now one might
3 consider they need to look at the
4 environmental impact of widening that piece
5 of road. That could mean chopping down some
6 rather large trees.

7 I think that just about covers
8 everything. By the way, I should mention
9 the erosion rate was point eight feet a year
10 from 1885 to 1969, one point nine from 1976
11 to 1996. From 2002 to 2020 it could be
12 three. Without some kind of graph or chart
13 with some detailed measurements to say how
14 it's going to vary over time, one can only
15 guess. It seems to me with a little work
16 this can be improved.

17 One last thing. They obviously
18 didn't want to do any extra work when they
19 reduced this thing, so we used figures for
20 populations from 1997. We had a 2000
21 census. Those figures are available. They
22 could have at least looked those up to put
23 them in. I suggest you have them do a lot
24 of work on this.

25 MR. SOMMER: Sir, professional qualifications?

1
2 MR. LIEBERMAN: I have a Ph.D. in Physics. I
3 teach engineering physics, I teach regular
4 physics, I teach optics.

5 MR. SOMMER: Have you given some consideration
6 with respect to the Draft Environmental
7 Impact Statement as to whether this plan
8 better or the same protects the bluff
9 stabilization? Does their plan protect the
10 bluff?

11 MR. LIEBERMAN: No, this plan doesn't talk about
12 protecting because the water washes it away
13 from the bottom, even though there is also
14 seepage from the middle of the bluff. If
15 one were to look at the adjacent property,
16 the property right here, they have a
17 bulkhead which, by the way, their bulkhead
18 is at their property line which is beyond
19 the mean high tide for this section, so this
20 line is clearly not there any more, it's
21 under water. They have erosion behind their
22 bulkhead.

23 Their concern was that the water
24 was somehow washing around the bulkhead. I
25 took a walk over there this afternoon and

1 there is water pouring out of the bluff
2 behind the bulkhead from about this high
3 up. It was clearly eroding from behind.
4

5 MR. SOMMER: Can you describe how high it was,
6 for the record?

7 MR. LIEBERMAN: I would say about eight or nine
8 feet. But there's water pouring out of the
9 bluff, so even if you build a bulkhead,
10 you're going to get erosion because of the
11 drainage through the bluff. One doesn't
12 know exactly how much water is going to be
13 coming out of the bluff and how much erosion
14 you're going to get. Most of the erosion in
15 the last thirteen years appears to be along
16 the base of the bluff and face of the bluff,
17 but not the top of the bluff, so that slope
18 of the bluff is very steep now.

19 What ultimately will happen as the
20 top of the bluff gets undermined because
21 it's getting too steep, you will get a large
22 chunk coming off of the top. You don't even
23 know what is going to happen, even in terms
24 of the top of the bluff. The talk of being
25 able to clear away all the shrubs in the

B-
2

1 conservation area, all they want to do is
2 make sure they leave the trees there, if
3 they're going to cut down all the
4 shrubbery. That means that between the
5 trees you only have grass. That doesn't
6 hold the top of the bluff very well. If you
7 walk along the beach, you can see a small
8 hunk where a piece came down with some small
9 trees and grass.

10
11 They talk about protecting the
12 beach with some rocks covered with mesh.
13 You saw pictures of them. Part of that
14 quote, beach is protected. That is in Long
15 Island Sound during high tide, so it
16 wouldn't really protect the beach very
17 well. They don't seem to mention that
18 either. I would say there a lot of
19 problems.

20 MR. SOMMER: You will have further
21 opportunity, as will everyone, to submit
22 written comments before we make a decision
23 on this matter.

24 MR. LIEBERMAN: One last thing. They talk about a
25 conservation area protecting the top of the

1 bluff. If you look at the very last corner,
2 right here (INDICATING) the top of the
3 bluff is actually outside the conservation
4 area. So that means that that three point
5 four, previously three point four acres,
6 since it's no longer three point four acres
7 due to the fact that the Sound has
8 encroached on the property, part of the top
9 of the bluff is not even in the conservation
10 area. So, there is a question of that
11 particular piece of bluff and how it will be
12 protected. Maybe by the setbacks, but
13 again, who is going to monitor the
14 homeowners to make sure that they don't cut
15 things down? It's a pretty secluded area.
16
17 Thank you.

18 MR. LAWLOR: My name is Michael Lawlor. I live
19 at 42 North Creek Road, Eatons Neck. My
20 property runs along the Hogan property. I
21 own about five and half acres on the water.
22 My friend David was just speaking now.

23 If you're a builder and you're
24 building a piece of property and you sell
25 this piece of property as a finished

1 package, why aren't the homeowners protected
2 with a wall built in front of this property
3 to hold this earth back? How can you
4 possibly sell someone a piece of property
5 with a home with a thirty year mortgage if
6 it's losing about two feet a year? In
7 thirty years you're going to be sixty feet
8 into the person's property.

9
10 Shouldn't bulkheading be built in
11 and be part of the building scheme? How
12 could you build a job like this without
13 having the people protected?

14 MR. MACHTAY: Mike, what about your property?

15 Are you bulkheaded?

16 MR. LAWLOR: I'm not bulkheaded.

17 THE FLOOR: You're stoned though, right?

18 MR. SOMMER: Please, don't do that.

19 MR. LAWLOR: Over the years, I'm a resident
20 there for forty-two years, I've seen how
21 much erosion happens, what happens with
22 pieces of sand and trees coming off the
23 bluff. But if someone is going to buy a
24 piece of property and have a home built, the
25 builder should have that bulkheading in as a

B-35
2.2B-3
2.

1 finished product and then backfill to
2 protect the owners of the six houses or
3 whatever. If the property stayed half acre
4 zone, I could have sold the property for
5 double of what it's worth, but I am
6 interested in the environment there. I want
7 to see the trees saved.

8 You know how many times I have
9 been back on this thing? I spent a lot of
10 money and time involved in that piece of
11 property. If he's going to do it, let him
12 do it the right way so everyone is
13 protected.

14
15 MR. SOMMER: Anybody else? Mr. Rieger?

16 MR. RIEGER: We will certainly address any
17 written comments that come afterwards.

18 MR. MACHTAY: Mr. Rieger, I might remind you
19 for ten days after the closing of this
20 hearing, the Board is responsible for
21 accepting comments in writing in terms of
22 addressing the impact statement. For ten
23 days we will accept comments in writing on
24 the Draft Environmental Impact Statement.

25 MR. RIEGER: Just for the record, we agree

1 topography and natural vegetation being
2 disturbed than the recharge basin
3 itself. They're welcome to talk to the
4 engineer as much as you want. All of the
5 bluff is contained within the conservation
6 area. In fact, in the alternative that is
7 proposed, the applicant has suggested that
8 an additional twenty-five feet back from the
9 bluff would be added to the conservation
10 no-build point. It would give you a hundred
11 twenty-five feet from the bluff back. The
12 description will be corrected on our final
13 map, but it's intended all of the bluff
14 will be included in that.

15
16 Finally, I urge the Board to refer
17 to Schedule B where First Coastal has
18 addressed most of the erosion issues. The
19 qualifications are in there. Finally, with
20 respect to Mr. Lawlor's comments, I
21 appreciate his concern with respect to the
22 bluff. As he knows, there is a homeowner
23 next door to us. The actual growth of
24 vegetation works very well in terms of
25 preserving the bluff and that is what we

1
2 intend to do.

3 This board has been given a cross
4 easement agreement for the six property
5 owners or four property owners to work in
6 concert for any kind of shoring up of the
7 erosion control that we want to put in.
8 Just as with your property, Mr. Lawlor, the
9 best control is not bulkhead, and it would
10 be the planting which works which you have
11 had for forty years. Any other questions?

12 MR. ASHER: What about the survey?

13 MR. RIEGER: I believe it's a later date, but I
14 will confirm that with Mr. Burt from Nelson
15 & Pope. I believe it's an accurate survey.

16 MR. ASHER: What about the suggestion for
17 bulkheading?

18 MR. RIEGER: It was discussed with the Planning
19 Board in the initial application, twenty-two
20 lots, and we maintained that the bulkhead
21 was not a concern of the Board. That any
22 permitting for that would be undertaken by
23 the homeowners association. Mr. Lawlor's
24 property has no bulkheading.

25 MR. ASHER: You won't have an erosion problem

1
2 with that?

3 MR. RIEGER: No, because you have the
4 vegetation growth there. We plan -- if you
5 look at Exhibit B you will see First
6 Coastal's suggestion that in their limited
7 opinion that the vegetation on that bluff
8 will greatly reduce the erosion rate.

9 MR. MACHTAY: Mr. Rieger, the way we usually do
10 these is that your consultant prepares the
11 final impact statement. But in as much as
12 the Planning Board is the author of the
13 document, they hand it over to us on a disc
14 or CD. Then we bring it to the Board and
15 perhaps make changes according to what the
16 Board wants, or leave it the way it is.

17 One of the things that you're
18 going to need to prepare that this young
19 lady sitting right down here she has to give
20 you the minutes of the meeting. Make
21 arrangements with her.

22 MR. ROSEN: On the issue of the deeded beach
23 rights, is that access that is needed?

24 MR. RIEGER: What we plan is to be a deeded
25 right as opposed to an easement. It's not

1 enlarging the property or decreasing. As
2 Mr. Lieberman pointed out, it's the area on
3 Lot 6 on the alternative. It's a fifteen
4 foot strip that will be handed down with
5 property. Whether it's an easement or deed
6 it's really going to be the same piece of
7 property.
8

9 MR. ROSEN: I think the point he was making
10 was the yield. I want to understand that.

11 MR. RIEGER: In that lot, if the Board felt
12 that the fifteen foot strip down there would
13 materially impact on the area, we would be
14 looking for the modification anyway on the
15 alternative. These lots are not full two
16 acre, anyway because it's a modified
17 cluster. The plan that you approved before
18 that was a modified cluster.

19 MR. SOMMER: What about the sight distance on
20 the road?

21 MR. RIEGER: I'll look into the actual
22 discrepancy. That is actually a corner that
23 is not actually part of this subdivision,
24 it's actually up here. It's an existing
25 condition that has been there since before

1
2 we came or anybody else came. My
3 understanding is that this lot here is very
4 overgrown. If, in fact, the Town actually
5 enforced its ordinance with respect to the
6 clearing to the site, that would greatly
7 increase that.

8 MR. MACHTAY: They will address all this in the
9 Final Impact Statement?

10 MR. RIEGER: Absolutely.

11 MR. SOMMER: We will declare this hearing
12 closed.

13 (THIS HEARING WAS CLOSED AT 11:30 P.M.)
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

STATE OF NEW YORK)

)

ss:

COUNTY OF SUFFOLK)

I, JUDI GALLOP, a Notary Public in and for the
State of New York, do hereby certify:

THAT this is a true and accurate record of the
Hearing held by and before the Planning Board of
the Town of Huntington on April 24, 2002, as
reported by me and transcribed by me.

IN WITNESS WHEREOF, I have hereunto set my hand
this 5th day of June, 2002.

Judi Gallop
JUDI GALLOP

CORRECTION SHEET

STATE OF NEW YORK

COUNTY OF

SS. :

I, _____, being duly sworn, depose and say:
I have read the transcript of my deposition and make the following insertions and/or corrections:

[illegible]

Signed: _____

Subscribed and sworn to before me
this _____ day of _____, 2001.

NOTARY PUBLIC

APPENDIX C

AGENCY COMMENTS





TOWN OF HUNTINGTON

DEPARTMENT OF PLANNING AND ENVIRONMENT

Frank P. Petrone, *Supervisor*

Richard Machtay, *Director*

May 7, 2002

Mr. Phillip Malicki
Nelson & Pope
572 Walt Whitman Road
Melville, New York 11747

Re: **Old Orchard Woods - Final Environmental Impact Statement (FEIS)**

Dear Mr. Malicki:

The applicant is hereby requested to prepare the Draft FEIS for the proposed Old Orchard Woods subdivision. Enclosed please find copies of comments and materials received by the Planning Board on the Draft EIS for the project. These submissions as well as the verbatim minutes from the public hearing shall be addressed in the FEIS. Please note comment #5 of Richard J. Nielsen's memorandum, dated May 3, 2002 regarding the requirements for a site recharge basin. The Planning Board requests that the FEIS also evaluate and compare the impacts of the proposed basin versus the use of individual leaching structures.

If you have any questions, please contact me at 351-3196.

Very truly yours,

Scott Robin
Senior Environmental Analyst
for
Richard Machtay
Director

Enc.

cc: Planning Board
Robert Sandberg, Planner
Richard J. Nielsen, Assistant Civil Engineer
William Kollmer Contracting
John Rieger, Esq.

RECEIVED

MAY 15 2002 PM w/

NELSON & POPE, LLP

Back up

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Appendix C-1
Town Department of Planning and Environment

Intra-Office Memorandum
March 12, 2002

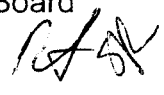


TOWN OF HUNTINGTON, NEW YORK
DEPARTMENT OF PLANNING AND ENVIRONMENT

Intra-Office Memorandum

Date: March 12, 2002

To: Tracey A. Edwards, Chairman, and Members of the Planning Board

From: Scott Robin & Robert Sandberg for Richard Machtay, Director 

Re: **OLD ORCHARD WOODS – ALTERNATIVE DESIGNS**

The Environmental and Planning Review Divisions have completed their review of the applicant's proposed conventional layout (Preliminary Map, dated January 28, 2002, received February 5, 2002) as well as the alternative cluster layouts prepared by Department Staff. In addition to the three layouts prepared by Department staff, we also reviewed the applicant's original cluster alternative that was submitted as part of the Draft Environmental Impact Statement dated July 2001.

The applicant's current plan proposes no modifications for preserving the "natural and scenic qualities of open lands" consistent with the Town Comprehensive Plan and §278 of New York State Town Law. Initially, a modified map was submitted, but was later revised on the applicant's own motion to show fully conforming lots. Although a 3.4 acre "preserve" and a 125-foot construction setback are indicated along the Long Island Sound; these areas will be part of the backyards of proposed Lots 3-6 with allowances for bulkheading, erection of docking facilities and maintenance, pruning and removal of vegetation.

C-1
6.6

The rezoning of the subject property was expected to "...diminish potential impact to land and natural resources, while maintaining the character of the community and providing for development which is consistent with surrounding development" (North Creek Road Properties, Eaton's Neck, Rezoning, EAF Parts II & III, dated 10/4/00). However, the Town Board observed that "There were no more protective development alternatives considered in the FEIS, such as clustering on a small portion of the property to conserve natural resources". Since clustering lies solely within the jurisdiction of the Planning Board, it could not be pursued by the Town Board. The Planning Board must now consider the Town Board's comments and any other environmental, social, and economic issues.

C-2
6.5

Segmenting natural areas of the site within fenced rear yards of individual lots provides little or no environmental protection. According to the applicant's EAF Part I and July 2001 Draft EIS, 7.16 acres of vegetation (trees, shrubs and ground covers will be removed with the project. This figure is likely to be greater upon review of the applicant's engineering drawings and with typical post construction activities by future homeowners (see environmental and engineering review history, Old Orchard Woods File #3 regarding increased clearing and removal of significant trees).

Although the applicant's July 2001 DEIS states that specimen trees will be maintained where possible and buffer strips left in the adjoining side and rear yards of homesites (pg. S-5), there is no guarantee that these areas will be retained after subdivision is complete. Consequently, as much as 17.18 acres of unique Tulip-Oak Forest may be removed with the proposed action. Maintenance, pruning and removal of dead vegetation would be allowed in the 3.4 acre reserve/preserve area as well as the 125-foot setback from the bluff (DEIS pg. S-3). It is not clear how or who will decide when vegetation is dead and subject to removal. In addition, a 1.43 acre portion of the 125-foot setback from the top of the bluff that lies outside the 3.4 acre reserve area will also be subject to clearing.

C-3
4.1

Page 7-17 of the Huntington Comprehensive Plan specifies:

"Lands in need of planned protection generally include: (1) parcels with significant environmental qualities, particularly those needed for the protection and maintenance of groundwater recharge areas, wetlands, sensitive coastal areas, and wildlife habitats, and (2) parcels with unique aesthetic, image and/or scenic qualities, particularly those associated with historic sites and structures and/or the buffering of existing uses."

C-4
6.1

The subject property qualifies for such protection in both categories and, in the absence of public acquisition, alternatives should be considered which would enable clustering of housing away from sensitive habitat areas in common ownership.

Appendix C-2
Town Highway Office

Inter-Office Memo
April 12, 2002



TOWN OF HUNTINGTON HIGHWAY OFFICE
Inter-Office Memo

Date: April 12, 2002

To: Richard Machtay, Director of Planning

From: William Naughton, Superintendent of Highways

Re: Old Orchard Woods – DEIS dated March, 2002
received at Highway April 8, 2002

See our July 9, 1999 memo regarding the DEIS dated June, 1999 for earlier comments, many of which still apply. Copy attached.

The submission was reviewed only with respect to the existing paved roads, since the final layout for the sub-division has not yet been determined.

Regardless what the DEIS says in sections 2.9, 3.4 and 4.4, there is, at best, a troublesome sight distance situation at the intersection of North Creek Road and Eaton's Neck Road which must be addressed. Perhaps Planning, Engineering and Highway should meet at the site to review remedies.

C-5
5.2

The paved portion of North Creek Road is about 24' wide, not the 34' indicated in 2.4.2. Section 4.4 states that the paved portion of North Creek Road will be improved by the Town, since "these were bonded at the time of the original Hogan Plat Sub-division." Where is that funding?

C-6
5.1

WN/pdc

cc Conrad F. Pohlmann, P.E., Highway Engineer
Scott Robin, Planning

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APR 16 2002

TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

DIRECTOR	
DEPUTY DIR	
ASST. DIRECTOR	
AGENT	RS
ADDED STAFF	
TOWN	

RN

Appendix C-3
Town Highway Office

Inter-Office Memo
May 3, 2001[2]



TOWN OF HUNTINGTON HIGHWAY OFFICE
Inter-Office Memo

Date: May 3, 2001

To: Richard Machtay, Director of Planning

From: William Naughton, Superintendent of Highways



Re: **Old Orchard Wood, Eaton's Neck**
Proposed Recharge Basin

It is our understanding that at the last Planning Board meeting there was some community opposition to the installation of a recharge basin associated with this sub-division.

Since the contributing area to the proposed recharge basin is the order of magnitude of 20 acres, a recharge basin is required. Also, since there is no positive overflow, it must be designed for 9" of rainfall, which is much greater than the 2" storage required if pools were to be used.

C-7
7.1
C-8
7.1

WN/pdc

cc: Conrad F. Pohlmann, P.E., Highway Engineer

DIRECTOR	
DEPUTY DIR	
ASST. DIRECTOR	
AGENDA	
ADDED STAFF	
TECH	

RECEIVED
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TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

Appendix C-4
Town Department of Planning & Environment

Intra-Office Memorandum
May 3, 2002




TOWN OF HUNTINGTON
DEPARTMENT of PLANNING
& ENVIRONMENT

Intra-Office Memorandum

Date: May 3, 2002

To: Scott Robin, Senior Environmental Analyst

From: Richard J. Nielsen, Assistant Civil Engineer 

Re: Old Orchard Woods(R-80) --March 2002 DEIS

A review of the March 2002 DEIS prepared by Nelson, Pope and Voorhis, LLC for engineering concerns offers the following:

- | | |
|--|----------------------------|
| 1.) The name of the property owner should be on all Alternatives and Preliminary Maps. | C-9
9.3 |
| 2.) It appears that Alternate 3 will retain the most natural areas. | C10
6.5 |
| 3.) Since the Zone is R-80 the recharge basin shall be designed to R-80 requirements while providing 150% storage. It appears that both its area and depth can be reduced to provide additional natural preservation. | C-11
7.1 |
| 4.) The Hogan Plat bond improvements for North Creek Road shall be made a part of this application to insure a standard Town road from Eaton's Neck Road to Sta.0+00 as shown on Alternate 3.
The top bullet on Page 4-4 of the DEIS indicates "Improvements to North Creek Road between the southeastern corner of the site and Eatons Neck Road will be provided by the the Town Of Huntington, as these were bonded at the time of the original Hogan Plat Subdivision." To the best of my knowledge this requires revision since the Hogan Plat bond has not been extended nor has the Town of Huntington levied on the Hogan Plat bond. Previous Preliminary Maps indicated that the portion of North Creek Road that as approved and bonded with Hogan Plat filed November 29, 1989, File No. 8859 shall be improved and bonded along with the entire length of North Creek Road shown on the map of Old Orchard Woods. | C-12
5.1 |
| 5.) It is my understanding that the need for a recharge basin was questioned at the Planning Board meeting of May 1, 2002. The Planning Boards Subdivision Regulations require that, in general, a tributary area of eight (8) developed acres or more shall be deemed to necessitate a storm water recharge basin. The Old Orchard Woods application indicates a preliminary area of 20 acres. Town regulations require that recharge basins with no positive overflow be designed for a 9" rainfall which is 150% of the storage requirement. A leaching pool system designed for 150% storage is for only a 3" rainfall. | C-13
7.1
C-14
7.1 |
| 6.) The bottom of DEIS Page 3-5 incorrectly indicates that the recharge basin will be constructed in the southeastern corner of the site. It shall be in the northeastern corner of the site. | C-15
7.1 |

Appendix C-5
Town Department of Planning and Environment

Intra-Office Memorandum
May 6, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

TOWN OF HUNTINGTON, NEW YORK
DEPARTMENT OF PLANNING AND ENVIRONMENT

Intra-Office Memorandum

Date: May 6, 2002

To: Richard Machtay, Director

From: Environment & Planning Review Divisions

Re: **Old Orchard Woods- Draft Environmental Impact Statement (DEIS)**

The following comments are offered on the March 2002 Draft Environmental Impact Statement (DEIS) for Old Orchard Woods:

- | | | |
|---|--|-------------|
| 1 | The DEIS interchangeably uses terms to describe areas that will either be temporarily, partially or fully protected. These include Preserve Area, Dedicated Areas, 125-foot Non-Disturbance Setback Area, 125-foot Buffer, Reserve Area, Natural Buffer Area and Conservation Area. These areas (some of which overlap) need to be defined in an explanatory chart to indicate their differences and similarities. In some cases the terms are contradictory, in others duplicative. A single term should be used for each area. | C-16
9.1 |
| 2 | DEIS plans note that grading within 50 feet of the bluff may be permitted where it is necessary to control erosion or to divert stormwater from flowing over the edge of the bluff. However, page 1-10 of the DEIS notes that "within the 3.4-acre Preserve Area, the clearing of trees and grading will be prohibited in accordance with the existing covenants and restrictions". This presents a conflict as portions of these two areas overlap. Since the 50-foot setback area and Preserve Area have a similar intent, they should be consolidated for greater bluff protection. | C-17
2.1 |
| 3 | Page S-25 states: 'The adjacent 125-foot setback area will be retained and protected... simultaneously preserving and protecting the natural vegetation and the unique and valuable scenic and aesthetic quality of the site'. Pages S-2 & S-5, however, state that clearing of brush/vegetation would be permitted in this area (pages S-2 & S-5). This discrepancy should be addressed. | C-18
2.1 |
| 4 | Page S-1: states that the Planning Board determined the 'Subdivision of the property into 22 lots would not result in significant impacts'. This statement is incorrect. As indicated in the Planning Board's Findings Statement it was determined that 'significant impacts (direct and indirect, short and long term) would result with the 22 lot subdivision'. | C-19
5.3 |
| 5 | Page S-2: Statements on this and other pages that indicate the Town Board's rezoning of the subject property to R-80 is out-of-character with historic zoning patterns should be deleted as they conflict with the official findings of the Town Board. | C-20
6.4 |
| 6 | Open Space Acquisition for preserving the site should be indicated in the No Action Alternative. The protection of the site can be considered a state objective. The subject site is located on a major linear system (Long Island Sound Shoreline & The South Shore of Long Island, Page 195) | C-21
6.1 |

identified as a priority in the state open space plan, *Conserving Open Space in New York State*, 1998. Therefore, its protection would be consistent with the Long Island Sound Study/Comprehensive Conservation and Management Plan, March 1994, which identifies in Section VII Management and Conservation of Living Resources and Their Habitats as a program recommendation in Table 41 (Habitat protection and acquisition): "Acquire and protect those sites that are considered priorities for acquisition in the New York State Open Space Conservation Plan" may be necessary to protect the ecological/geological resource presented by the bluffs.

- 7 Of the three development alternatives, none included a tight cluster although it was identified by the Town Board as an important option deserving full examination. The Town Board observed that "There were no more protective development alternatives considered in the FEIS, such as clustering on a small portion of the property to conserve natural resources" (North Creek Road Properties, Eaton's Neck, Rezoning, EAF Parts II & III, dated 10/4/00). The DEIS should address tight clustering as a viable alternative as recommended earlier by staff (see March 12, 2002 staff memorandum, copy attached). C-22
6.5
- 8 As open space, grading, drainage, erosion, sedimentation are major concerns relative to any development of the site, the DEIS should include pictorial information showing the amount of clearing that may be required for each alternative. C-23
4.1
- 9 The DEIS states (page 3-10) that the project will retain large diameter trees where possible within the proposed construction/disturbance areas. Based upon the Tree Location Plan for the previous 22-lot proposal and required slope requirements, all trees within clearing limits were proposed for removal. How will the current proposal be different in saving these trees? C-24
4.1
- 10 The applicant concludes (page 5-1), that 'several large trees will be removed as a result of the proposed project'. Page 3-10 of the DEIS estimates that '388 trees with a DBH of at least 10" may be potentially cleared'. DEIS statements should be consistent with each other and supported by adequate data from the document text and studies. C-25
4.1
- 11 Pages S-5 & S-11: state that beach access will be accessible for site residents. Property lines for lots 3-6 terminate at the mean high water mark. It should be made clear if residents will have cross easements across these lots to access the waterfront. C-26
9.4
- 12 Page S-3: states 'The recharge basin will be a total of 66,072 SF in area and will be sized to handle all stormwater runoff generated on-site'. The recharge basin will likely not handle all the runoff. As indicated on Page S-7: 'fertilizers, pesticides and other lawn chemicals will run downslope westward onto and down the bluff, and thereby impacting Long Island Sound except as filtered by the intervening 125-foot buffer'. This discrepancy should be addressed C-27
7.1
- 13 Page S-5: states that 'It is anticipated that clearing will extend 100 feet from the rear of the residences, or in the case of Lots 3 and 4, the Preserve Area boundary'. If this statement is accurate, the filtering mitigation mentioned in comment 12 above will be reduced with increased potential for installation of high maintenance landscaping and associated chemical runoff into Long Island Sound. This impact should be addressed. C-28
7.1
- 14 Page S-25: states that 'the project will clear an additional 15 to 20% of the site, while retaining the remainder as natural (the entire bluff area and adjoining 125-foot buffer and vegetated buffers)'. More information should be provided on the extent and type of protection being offered for the "vegetated buffer" area. C-29
2.1
- 15 Potential traffic impacts should be addressed from transporting excavated soil from the site through the community including the Villages of Asharoken and Northport. C-30
5.3
- 16 Maps should be titled to include their respective Plate Numbers. C-31
9.2

Enc.

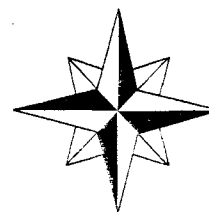
Appendix C-6
Town Department of Maritime Services

Inter-Office Memorandum
May 6, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

TOWN OF HUNTINGTON
DEPT. OF MARITIME SERVICES



Inter-Office Memorandum



Date: May 6, 2002

To: Bari Sue Koehler, Planning Aide

From: Richard C. Koopmann, Sr. Environmental Analyst

Re: Old Orchard Woods

Per your request, the Department of Maritime Services has reviewed the March 2002 DEIS on the Old Orchard Woods Project, and submits the comments presented below.

The degree of impact to the environment has been somewhat lessened by the current DEIS and changes that have been made to the project since the last review, although there are remaining impacts that Maritime Services believes could be better mitigated without loss to the developer.

It is recognized that the stabilization of the bluff at Old Orchard Woods is an accepted means of preventing the loss of land from the parcels located on the waterfront, although it also results in an impact upon the width of down-drift beaches, as well as on the beach at Old Orchard Woods. Maritime Services would like to see this impact mitigated by non-structural, but, albeit less efficient methods of stabilizing the bluff with vegetation. Additionally, Maritime Services continues to feel that the bluff would be better managed from an environmental standpoint, if it were common community property.

C-32
3.1

The destruction of many mature trees on the site is, unfortunately, unavoidable with the development of this land. We believe, however, that DEIS should contain more specific and guaranteed methods of ensuring that a maximum amount of woodland will be preserved, and that trees that are to remain are not severely impacted by nearby heavy equipment, open excavations, etc.

C-33
4.1

Alternative 3 in the DEIS is the preferred alternative of Maritime Services, as it preserves more woodland and open space than the preferred alternative that was selected by the developer.

C-34
6.5

This Department would like to see as much of this mature woodland kept in a natural state as possible, and thereby stands behind any effort for public acquisition or conservation easements.

C-35
6.1

As the Planning Board is aware, the Town Board initiated the preparation of a Local Waterfront Revitalization Plan (LWRP) for the unincorporated waterfront portions of the Town, of which Old Orchard Woods is a part. Although this LWRP will not be adopted by the Town for approximately two years, the intention for the LWRP State-mandated policies to apply to this land is clear. In this light, the comments made above are supported by the State mandated

C-36
6.2

DEPT. OF MARITIME SERVICES	
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TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

LWRP policies, It should also be noted that if the LWRP were now in effect for Old Orchard Woods, the impacts referenced above would have to be satisfactorily mitigated before a positive consistency determination could be made, and the project approved by the Planning Board.

Please do not hesitate to contact me if you have any questions or would like to discuss any of the above.

cc: J. J. Anastasia II

RCK:rk

Appendix C-7
Town Conservation Board

May 6, 2002



TOWN OF HUNTINGTON



FRANK P. PETRONE, *Supervisor*

100 MAIN STREET, HUNTINGTON, N.Y. 11743-6991

CONSERVATION BOARD
631-351-3398

Ms. Tracy Edwards, Chair
Town of Huntington Planning Board
100 Main Street
Huntington, New York 11743

Re: Old Orchard Woods - Draft Environmental Impact Statement (DEIS)

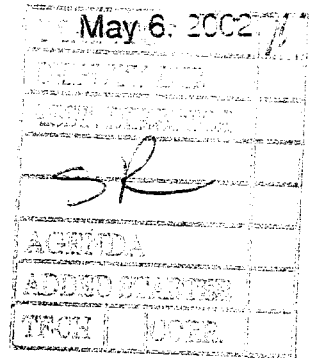
Dear Ms. Edwards:

The Huntington Conservation Board has reviewed the Draft Environmental Impact Statement for Old Orchard Woods. We offer the following comments regarding the DEIS.

We believe this DEIS includes some improvements over the 2001 version, but we are concerned with the adverse change to a completely new layout as the Preferred Alternative. Improvements are primarily in the evaluation of the geological and hydrological conditions of the site. The data on additional soil borings and analysis of ground water seepage seems to support the conclusion that on-site septic systems would be expected to function adequately.

A detailed analysis is also presented on the littoral drift of sand from Eatons Neck Point south to Sand City. Expert opinion maintains that the mixed sediment eroding from the face of the bluff contributes little to the beach accretion to the south. However, there persists a failure to recognize the value of this bluff as part of a disappearing marine habitat around Long Island Sound. It is implied that this bluff is an inconvenient defect that can only be mitigated by bulkheading, though such is not part of the formal proposal. Though perhaps of minor importance to littoral sand movement, these eroding glacial sediments are nonetheless responsible for maintaining the broad aesthetically pleasing beach that now exists. A glance at the armored shoreline to the south reveals the inevitable result of a bulkhead: a stable slope and the near total absence of any beach above high water.

As to the upland habitat, the specimen trees have been inventoried in the present DEIS. It is stated that clearing will be limited so as to spare these venerable trees. However, it should be noted that the feeder roots extend laterally almost to the edge of the leaf canopy, and that excavation and soil compaction from heavy equipment will stress and weaken at least some of the trees. If drought and/or disease then occur, loss of trees will be the result with several years.



C-37
3.1

3.1

C-38
4.1

MAY 08 2002
TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT



As stated in the DEIS, fragmentation of the woodland would increase edge habitat, which benefits certain suburban-adapted birds and mammals. The Adaptability Table of Appendix D-4 is an interesting presentation of this concept. There is no mention of the adverse effects of opening the canopy, other than the loss of obligate woodland species. Another consequence would be establishment of invasive alien species of plants (e.g. asiatic bittersweet, Japanese honeysuckle, multiflora rose) at the expense of native understory plants. Similarly, aggressive alien birds usually attend human disturbance of woods and displace native species, as in the usurpation of cavity nest sites by the European starling from native species of woodpeckers.

C-39
4.2

The most unfortunate change from the 2001 DEIS is a completely new layout as the Preferred Alternative. Under this proposal, the property is subdivided into 10 equal two acre lots with maximum building envelopes drawn with them. The Conservation Board considers this to be an egregious retrenchment in the mitigation of the environmental impact which was achieved by re-zoning to R-80, as well as by a fairly progressive layout that is the Preferred Alternative in the 2001 DEIS. That latter plan is now relegated to Alternative 3, which presents 10 lots of various sizes with small building envelopes clustered in the more level central part of the property, thus providing much greater preservation of undisturbed open space.

C-40
6.3

The Conservation Board has the following recommendations:

1. We continue to strongly support public acquisition and/or protection of as much of this priceless land as is possible.
2. Should development supervene, we strongly advise adoption of Alternative 3.
3. A homeowner's association should be mandated as the best way to oversee the upkeep and protection of all Reserve Areas in accordance with the intent of the environmental restrictions.
4. Town professionals in the Department of Planning and Environment and/or an arborist should monitor this site during construction to ensure adherence to all guidelines.

C-41
6.1

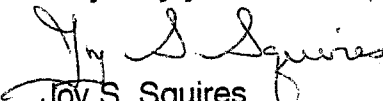
C-42
6.5

C-43
2.1

C-44
4.3

This report was approved by an unanimous vote of the Conservation Board.

Very truly yours,


Joy S. Squires

JSS:BT:js

cc: Supervisor Petrone and the Huntington Town Board
Richard Machtay, Director, Department of Planning and Environment

APPENDIX D

PUBLIC COMMENTS



Appendix D-1
Christine G. Ballow

Property Owners of Eatons Neck
April 25, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

April 25, 2002

To: Huntington Planning Board

From: Christine G. Ballow, Property Owners of Eatons Neck

Subject: Old Orchard Woods

Dear Huntington Planning Board Members,

Attached is report from the July 2000 Huntington Town Board Public Hearing on Old Orchard Woods. Unfortunately, after thoroughly examining the Planning Department's Old Orchard Woods files, the report that was referenced in the minutes was missing along with other documents, including reports from Nancy Reagan, Joni Altner, pictures and petitions. The attached is a similar letter that was presented addressing the same issues.

I will also forward my April 24th presentation to you shortly.

Sincerely,

Christine G. Ballow

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DEPARTMENT OF PLANNING
AND ENVIRONMENT

INTRODUCED	
DEPUTY DEPT	
ACCA DIVISION	
ACCA	
ADDED CHAIRMAN	
FILE	BOOK

Handwritten initials "SR" and "R.S." are present. An arrow points from the "FILE" box to "R.S." and "R.N." below.

R.S.
R.N.

Huntington Town Board
Public Hearing – Re: Hogan Property, proposed “Old Orchard Woods”
Statement made by Christine Ballow, 24 Essex Drive

The Hogan property (Old Orchard Woods) is the only parcel of land that the Conservation Board in its history unanimously opposed building.

I'd like to read several quotes from the Environmental Assessment documentation

Form part 3 page 5: “...along North Creek Road are marginal areas which contain fresh water wetland vegetation... associated with the Eatons Neck Point Area (designated as a significant coastal fish and wildlife habitat) which is north and downgradient of the site.

Continuing on page 8: “...Impact on Water – the proposed action will affect a body of water designated as protected under articles 15,24,25 of New York State Environmental Conservation Law and Town of Huntington conservation laws. State regulated wetlands may be significantly affected by the proposed action from runoff of sediment-laden storm water during and following construction and from sub-surface sanitary flows that may discharge into surface waters. ... the combination of permeability and presence of a clay layer (page 2 para 3 – Conservation Board Memorandum) could allow water and sanitary flows to percolate quickly to the clay layer. These flows then could move laterally along the clay layer to sea level (natural springs at the toe of the bluff)”.

What impact would this sanitary flow and runoff have? Multiple studies in different medical journals have stated the impact of bacterial, viral and parasitic infiltrations of ground and recreational waters through septic tank contamination. The most common cause of diarrheal illness is Campylobacter Jejuni.

D-1
3.1

Recently the American Society of Microbiology, of which I am a member, disclosed a study relating Helicobacter pylori (H. pylori) and runoff from septic tanks. H. pylori is the bacterium that accounts for 75% of stomach ulcers, and some gastric carcinomas as well. The etiology of H. pylori is not clear. Researchers in the Department of Environmental Engineering in Penn State, Harrisburg Pa. report a direct link between the presence of H. pylori in drinking water obtained from wells and stomach ulcers and septic tanks. 65% of samples collected in Pennsylvania and Ohio were positive for H. pylori, suggesting that well water is a major reservoir for H. pylori outside the human body. H. pylori existed even in the absence of coliforms. Baker, et. al, suspects that H. pylori enters septic tanks after infected individuals use the toilet, then from the septic tanks the bacterium seeps into the ground water and wells. Although such tanks should lie at least 100 ft. from wells, springs or creeks – “the standards are often overlooked or not enforced in rural areas”. Thus upzoning would certainly allow septic tanks to be placed at a much greater distance from each other, the bluffs,

the springs, the creek and groundwater – allowing a greater dilution and reducing the risk of this type of inoculation.

Viruses are more resistant to disinfection than coliforms. They are more stable in some conditions. The amount of moisture in soil is directly proportional to the amount of virus in the soil. Enteric viruses survive 15-25 days compared with 60-90 days with 10% moisture content in soil. The most prevalent components of a soil that would help viruses survive are clay materials. Once again the unique nature of our area with its high clay content would be conducive to a higher viral survival rate which would once again benefit from a lower yield and lower volume of septic waste.

Cryptosporidium is a protozoan parasite with a very low infectious dose (a very small quantity is required for individuals to exhibit clinical illness) is difficult to filter and resistant to chlorination. Several outbreaks in Milwaukee were caused by septic system contamination of recreational water sprinklers (that stemmed from run-off). This organism causes severe diarrhea and can be fatal to immunocompromised individuals.

The previously mentioned data from the environmental assessment makes it clear that because of potential run-off into ground water springs – reducing the yield of homes and their accompanying septic tanks, increasing the distance between these homes/septic systems would greatly reduce the risk of this type of contamination. In addition, with an upgrade in zoning, there would be fewer septic tanks near the bluffs and they would more likely be situated further from the bluff and its springs.

D-2
9.8

Additionally, because upzoning would decrease the number of homes built and the number of trees destroyed and land regraded, there is a greater chance of not requiring a sump. Certainly with fewer homes, less vegetation will be displaced and less regrading would have lessened impact of possible flooding.

D-3
9.8

Upzoning would certainly preserve more vegetation, but also more of the wonderful wildlife, including the juvenile Cedar Wax Wing found on my yard's edge at the Hogan property, normally a transitional breed.

D-4
9.8

Lastly. The environmental assessment form part 1 page 7 ignored the existence of 'North Creek' in that "...no streams or rivers are identified as being contiguous to the project area." This is an incorrect statement.

D-5
4.2

In ending, for this most delicate parcel of land the least we can do is to upzone it to 2 acres to somewhat mitigate developmental ravishment.

I thank Supervisor Petrone and the Huntington Town Board for their support in this issue. I also wish to thank Legislator Jon Cooper for his support.

To: Planning Board

Date: April 24, 2002

Public Hearing regarding Old Orchard Woods

My name is Christine Ballow. I live at 24 Essex Drive, within 5 feet of Old Orchard Woods. I am the immediate past president of the Property Owners of Eaton's Neck, have been on the board for the past 4 years and have continued to study and assess the former Hogan Estate for these past four years. We represent approximately 500 homeowners and have submitted petitions in the past.

We are here for the 3rd time in four years addressing a plan, which although slightly different, will have the same negative impacts on the flora/fauna and the general environment of Eaton's Neck.

The conclusions of the previous final impact statement and the current draft environmental impact statement have shown that the proposed project will result in adverse environmental impacts." These impacts include:

- Loss of open space and visual resources
- Removal of Native Oak-Tulip forest
- Permanent alteration of the natural topography
- Displacement and/or loss of wild life species
- Erosion and off-site sedimentation
- Increase in sanitary flows
- the potential for future shoreline hardening of the bluff and subsequent loss in sand to beaches adjoining and downdrift of the site.
- Positive stormwater overflow from site to private properties in the village of Asharoken and Eaton's Neck
- Stormwater flows from landscaped surfaces to L.I. Sound
- Increase in vehicle trips to local roadways
- Increase in number of residents and demand for community services
- Temporary increases in construction traffic, fugitive dust and noise during construction.
- Possible increase of traffic hazard at the intersection of North Creek and Eaton's neck roads."

Adverse impacts that cannot be avoided include "Increase in sanitary flows". The potential for sewage run-off mixing with recreational water still exists. Those impacts have been discussed in the past, and, to quickly summarize, there have been studies done in Pennsylvania showing the biohazard effects of that mixing from septic systems. The studies, published several years ago in the Journal of Clinical Microbiology and Journal of Applied cl. Microbiology, showed the transference of *Helicobacter pylori* (the bacteria implicated ulcers, gastritis, GERD-gastroesophageal reflux disease, and some gastric carcinomas) from septic leakage to recreational waters. Additional incidences include other fecal contamination and their consequences in parts of Milwaukee (cryptosporidia-a protozoan). These are very real possibilities, especially in this situation, since one of the plans includes an alteration of the topography to ensure waterviews. Unless the current site maps are wrong, those proposed houses would be raised on landfill approximately 20-30 ft above the adjacent properties on Essex. There are proposed drainage wells. However, this would NOT preclude sewage leakage towards the bluff, where at least three underground streams presently leak, nor towards the homeowners on Essex. The burden of correcting this situation would be left to the ensuing lawsuits dealing with the damage to homeowners and/or property.

Even in the DEIS, prepared by Nelson, Pope, and Vorhees, there is concern. In the DEIS summary, page 8, I quote "in the lots along the western preserve area the septic systems will be located in the front yardsthis will minimize the potential for seepage of recharge waste water from the bluff face." Obviously the potential for leakage still exists since this will not eliminate but try to minimize leakage. Also the applicant does not anticipate the standard waste water design flow to be exceeded yet these houses will have between 4 and 5 bedrooms. "The concern of nitrogen in subsurface waters is related to the presence of a discontinuous layer beneath the project site which could potentially result in the discharge of waters along the bluff face, impacted by septic wastes... There is one limited location on the property where an impermeable clay layer exists approximately 70 feet below ground surface. Reduced permeability clay has been documented in other portions of the property approximately 40 feet below grade. The deeper gray clay is restricted to the western part of the property and is the reason why seepage is detected at the face of the bluff."

"Effluent will leach to the water table and become part of the regions ground water reservoir" and again "seepage that have been observed along the bluff face are believed to be the result of perched water conditions that lie within a 100 to 200 foot area along the western portion of the property." "In addition, analysis of the data generated from the geologic borings collected on site and observation of site topography indicate that the discontinuous clay layer MAY slope away from the bluff face."

There are a lot of suppositions in these statements. The extent, slope and effect of the clay layer have not definitively been determined. Based on these statements in the DEIS there can not be a clear conclusion regarding the potential for extensive effluent leakage and destabilization of the bluff.

The inability of the DEIS to mitigate these concerns further reinforces the support of the Huntington Conservation Board. The Huntington Conservation Board, for the first time in their history, unanimously opposed the development of this property. Obviously there are grave concerns from the conservation point of view.

Additionally, the NYS DEC has listed this property as one of the parcels considered a high priority in their preservation efforts. The Suffolk County Legislature has taken the introductory steps to preserve this land and the Town of Huntington has also been instrumental in their support because of environmental concerns.

As the immediate past president of the P.O.E.N.B., I know how our community feels. They have adamantly opposed this development and have done everything they can to support it's preservation. In November, the number of Eaton's Neck, Asharoken and even Northport residents that had called, written, e-mailed, or spoke with Suffolk County Legislators was enormous. In fact, the Suffolk County Legislators were overwhelmed by the support of our communities. There is serious concern from 3 bodies of government, 3 different communities and environmentalists regarding the proposal as it stands.

The Planning Board should recognize that the Huntington Town Board has established the zoning of this property as two acres. Any discussion or acceptance of submissions, maps or any other materials related to R-20 zoning may, in fact, jeopardize the R-80 zoning and should be dismissed in it's entirety. This zoning has been confirmed twice in court.

Public opinion has not changed; facts have not changed. This property has many issues concerning it's development and therefore should be allowed to remain in it's pristine state as parkland. Please do all that you can to help us.
Thank you.

Christine G. Ballow
.24 Essex Drive
Eaton's Neck, NY 11768

Appendix D-2
John J. Ballow

April 25, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

April 25, 2002

To: Huntington Planning Board

From: John J. Ballow

Subject: Old Orchard Woods - Subdivision Map Additional Errors

Dear Huntington Planning Board Members,

During the Public Hearings on April 24, 2002, D. Lieberman during his presentation pointed out several issues that question the actual size of the property. I believe there are also significant errors in the topography and elevation lines.

I reside at Lot 399 and border the proposed development. In my review of the subject map, it appears that the topography is also grossly incorrect. Lot 398 (Owen) is down hill from mine by at least 10 feet and Lot 400 (Pierce) is up hill by 3 feet. The elevation lines on the subject maps depict my Lot 399 as the low point and therefore place 2 leaching pools bordering my backyard - they are in the wrong location.

D-6
9.6

The elevation lines are wrong, the maps are wrong, the site layout is wrong - given the late stage of this proposed development and several years of reviews, I find this all very concerning.

Visual inspection of the property in this southwest corner of the plot would also question the wisdom of the proposed "cluster" alternative with 6 homes along the bluff, the drainage in this area is going to be a problem and the sewage runoff from the cesspools needs to thoroughly addressed. The clay layer is directly below the 6 homes and the DEIS states that it is uncertain which way everything will drain - the increased surface watering and cesspool volumes could seriously affect the stability of the bluff and allow sewage to escape into the sound.

D-7
3.1

In addition, there is a natural clearing in the valley in this area, the proposed homes will be a visual blight to lots 397, 398, 399 and 400 at a minimum, since the proposed homes will be uphill to the existing homes any screening attempts will be wholly ineffective.

D-8
8.1

Sincerely,

John J. Ballow
24 Essex Drive
Eatons Neck, NY 11768

Appendix D-3
William R. Butler

April 26, 2000[2]



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

April 26, 2000

SEARCHED	INDEXED
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MAY 03 2002	
TOWN OF HUNTINGTON	
DEPARTMENT OF PLANNING AND ENVIRONMENT	

RECEIVED
MAY 03 2002
TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

Mr. Richard Hochster, Director
Planning Board
Town of Huntington
Town Hall - 100 Main Street
Huntington NY 11743

RE: Old Orchard Woods

Members of the Planning Board:

Please note that the Draft Environmental Impact Statement before you is unsatisfactory because it is laced with error, fallacy and self-serving declarations. Among these are (quotations from the record are in Roman followed by my comments in italic):

SUMMARY

Introduction

Pg S-1 -1988 EAF "advocated for cluster development."

No genuine alternative is in this DEIS. Clustering would provide a genuine alternative. (See below under Alternatives.) (Also, see Pg S-24, stating that town comprehensive plan update "recommended...clustering be considered in order to preserve open space."

D-9
6.5

Project Purpose

Pg S-2 - "Area has long been and remains an area with a distinctly rural atmosphere."

The DEIS as presented provides a drastic environmental impact in its effect on character of the community or neighborhood, introducing elements incompatible with rural atmosphere. (See the attached letter from the Village of Asharoken Planning Board.)

D-10
8.2

Bluffs and Bulkheading

Pg S-6 - "It has been documented that a shoreline structure parallel to the shoreline and above mean high water is benign from a coastal

resources standpoint. As a result...such a structure would not...impact to adjacent or nearby properties."

This is not so. Where does the 1.9 feet-a-year erosion of the bluff go? (See attached copy of my letter to the Department of Marine Services.) (Also see Sec S-14 and Pg 2-11 below.)

D-11
2.2

Access, Road System and Parking -

Pg S-7 - "Roadway will be 34' in paved width." 1.89 acres of paved surface. "Garages...and...driveways...will be of sufficient size so that the need for on-street parking will be minimized or eliminated."

Regulation road surface is not essential and only serves to exacerbate the runoff (see attached copy of letter from Village of Asharoken Planning Board.)

D-12
5.1

Recharge System -

Pg S-7 - "In conformance with town...requirements, all stormwater runoff generated on developed surfaces will be retained on-site to be recharged to groundwater in the proposed recharge basin."

Pg S-8 - Required storage "minimum of 157,083 cu ft."

"Establishment of sidewall slopes of 1:3 or less." "The subject property currently generates runoff as the result of overland flow during rain events when the infiltration capacity of the soil is exceeded."

As testified at the public hearing, the calculation of required storage is erroneous in that it calculates runoff of the entire site, while about 45% of the site slopes northwest, west, southwest and south - away from the proposed sump. Additionally, if the paving is reduced to the minimum necessary for a short dead-end street serving 10 homes with off-street parking, pavement runoff can be reduced by about 30%. (Also see Pg S-17 for relevance of preserved vegetation.) It appears questionable whether sidewall slopes of 1:3 can be accomplished since the sump is located in an area of steep slopes. Additionally, we have a conflict between the standard used to estimate runoff (as applied to the undeveloped land) and actual experience of residents who know that runoff comes from pavements (town-owned portion of North Creek Road, Hogan driveway) while the forest floor is an effective sponge. Because of the extraordinary nature of the site, runoff should be calculated with more thought than merely applying a rule-of-thumb standard. (See also Sec 2.3 below.)

D-13
7.1

Pg S-8 - Sanitary Disposal and Water Supply - "Seepage along the bluff is not expected due to the discontinuous nature of the clay layer."

Seepage along the bluff currently exists without the addition of 17.38 MGY of impermeable and wastewater (See Pg S-16 and Pg S-17 DEIS which are inconsistent with Pg S-8).

D-14
3.1

Significant Environmental Impacts -

Pg S-12 - Geology - "recharge basin will be excavated to an elevation of 10' above sea level...groundwater table lies at an elevation of approximately 2' above sea level."

Topography, Bluff Recession and Beach Erosion -

Pg S-13 - "Grading operation is not expected to produce slopes in excess of 1:3 within the recharge basin" and "steeper sloped portions of the site are avoided."

Topographic map shows the bed of the sump at 50' and the rear of the sump site at 60'. Is it possible to rise from 10' to 60' with a 1:3 grade? Is it possible to dig 40' down within the confines shown on the map?

D-15
7.1

Pg S-14 - "Bluff is receding at a rate of approximately 1.9" per year. The primary cause of bluff retreat at the site is wave attack... This is evident when observing the bluff faces adjacent...these bluffs have been stabilized through the use of sea walls."

"Consideration has been given to the potential impacts associated with toe stabilization should this occur in the future...It is not anticipated that the construction of a toe stabilization structure would result in a reduction of sand to beaches downdrift of the site. Such structures located parallel to the shoreline and above mean high water are documented to be benign to the environment. Based on the subject property's beach and bluff width, the site is not the sole or major contributor of sand nourishment to the shoreline south of the subject property. This is determined by the potential contribution of the site to the overall sediment budget of material in transport." (Refers to letter for First Coastal)

Pg S-15 - "The specialist concludes that the bluffs located along the middle cell provide little if any sediment to the littoral system."

Absolute nonsense. Where does the 1.9'/year erosion of the bluff go if not to the beach and thence downdrift? Erosion may be observed to be continual as well as episodic and continual may likely be the primary factor. (See attached copy of letter to Department of Marine Services.) (See Subsurface Soils, Sec 2.1.2 below.)

D-16
2.2

Water Resources, Water Balance

Pg S-16 - "...impermeable and wastewater 17.38 MGY...26.3% increase. Wastewater 3,000 GPD

'Horizontal conductivity of soils is greater than the vertical conductivity...

Pg S-17 - Recharge flow through the subsurface may result in some horizontal flow and perched water conditions along the surface of the clay...Geologic profiles indicate that the clay lenses are less continuous on the eastern portion of the site."

Surface Water and Drainage

Pg S-17 - "The existing restriction on clearing within and adjacent to the reserve area, in conjunction with the existing restrictive covenant, will preserve the natural vegetation in this area, which will act to retain and slow down the overland flow and recharge it to groundwater."

"The proposed action is not expected to have a significant impact on surface waters resulting from sanitary flows that may discharge to the surface."

"These clay layers influence the horizontal movement of groundwater movement and may result in the discharge of water as seeps along clay lenses observed in the bluff face."

"The proposed project is not expected to have any adverse impact on the adjacent water body..."

Extent and orientation of clay layers near the bluff is unknown, merely confirmed. DEIS states self-servingly that clay layers "may" slope eastward. If not, DEIS confirms that recharged septic water may seep horizontally to the face of the bluff. According to the DEIS, horizontal flow is greater than vertical flow without interruption by clay lenses. (See Sec 2.1.2 and 2.2.1 below.)

D-17
3.1

Ecological Impacts

Pg S-19 - "creation of a recharge basin will increase the habitat value for particular species of wildlife..."

Maybe rats?

D-18
4.2

Rare Species/Habitat Potential

Pg S-21 - "Piping plover and Least Tern...found on site...are listed as endangered species....Significant impacts are not expected as there is suitable habitat elsewhere in the vicinity."

Is "scram, buddy" sufficient?

D-19
4.2

NYS Coastal Management Program, The Developed Coast

Pg S-26 - "...site has no established or suspected historical resources, no such impact is anticipated."

See accompanying letter documenting the historical nature of the right of way known as North Creek Road. which traverses the site.

D-20
5.1

NYS Open Space Conservation Plan

Pg S-28 - "The proposed project will retain the existing aesthetic quality of the site, not only for its residents, but for the public at large..."

Yet another declaration that totally ignores the impact on the existing character of the community or neighborhood. A sump cannot be considered an aesthetic contribution to the Huntington Town Neighborhood Beautification Program.

D-21
8.1

Cultural Resources, Visual Resources

Pg S-31 - "In general, the impact of the project on the visual resource of the site will be to slightly increase the visibility of the buildings proposed, though primarily to viewers at a distance to the west. Viewers closer to the site to the north, east and south will experience lesser degrees of impact, as the thickness and density of the vegetation retained within the site in these directions is greater than for the westerly bluff area."

There is proposed only the usual sparse horticultural buffering of the sump, leaving what is described as "lesser degrees of impact" as pure chutzpah. (See also Pg 2-72 below.)

D-22
8.2

Pg S-32 - "There will be no parking of cars, boats or other vehicles on North Creek Road. Roads interior to the Old Orchard Woods subdivision are likewise not expected to have on-street parking since adequate lot sizes, driveways and garages will be provided..."
"...no significant adverse impact is expected...with regards to road installation."

This section supports the proposal that full town-specification road width is not necessary.

D-23
5.1

Mitigation Measures, Transportation

Pg S-35 - "As the proposed project will not generate a number of vehicle trips sufficient to significantly impact...intersections, no mitigation is required."

"At the North Creek Road/Eaton's Neck Road intersection...toward the southwest the existing sight distance (140') is close to the AASHP standard of 125'

Not so. DEIS assumes the speed limit from the southwest is 20 MPH, while it is posted as 30 MPH. This entire section is based on a falsehood.

D-24
5.2

Land Use, Zoning and Planning

Pg S-36 - "The recommendation of the Town Comprehensive Plan Update with respect to...minimizing disturbance to the established residential areas...will be followed."

The plan proposes a drastic and permanent disturbance to the character of the community or neighborhood.

D-25
8.2

"The proposed project conforms to all the applicable regulations on the Suffolk County Planning Commission Guidebook, hence, no mitigation is required."

But, see Pg S27: "a second vehicle access cannot be provided as recommended by the Guidebook."

D-26
9.9

Pg S36 - Community Services

"Proper lighting of the site will be employed to discourage loitering and other illegal activity."

If this means street lights, consider the absurdity of lights glaring through the night in the heart of the forest, on a dead-end road and in a community that gets along without street lights. This is inconsistent with the considerable efforts already made by the Board to conserve the natural beauties of the site. On-house motion-sensitive lights would be a reasonable alternative.

D-27
9.7

Recharge System, Sec 1.3.6

(Pg 1-13) "Based upon town standards the project must provide storage for a minimum of 157,083 cubic feet of runoff...preliminary map indicates that the proposed recharge basin has been designed to handle 180,000 cubic feet of storage capacity."

"The subject property currently generates runoff as a result of overland flow during rain events when the infiltration capacity of the soil is exceeded."

"The proposed drainage system will include a runoff coefficient for adjacent contributing areas."

See comments above under Recharge System, Pgs S-7 and S-8

Subsurface Geology, Sec 2.1.1

Pg 2-7 - Soil boring results confirmed the presence of a perched water table resting above an impermeable gray clay lens in one boring along the western portion of the site...may be intermittently

present along a 100 to 120 foot wide strip along the western edge of the property with visible outcrops along the bluff face. Seeps that have been observed along the bluff face are believed to be the result of perched water conditions which lie within 110 to 120 feet inland of the crest of the bluff."

See comments to Water Resources, Pg S-16 above.)

Subsurface Soils, Escarpments, Sec 2.1.2

Pg 2-11 - "The material in the escarpment is sand."

See comments to Pg S-14 above.

Sec 2.1.3 Topography, Bluff Recession and Beach Erosion

Pg 2-11 - "Bluff rises to an elevation ranging from 30 to 80 feet."

Pg 2-13 - "The northwest corner of the site slopes downward toward the beach. The eastern half of the site slopes downward toward the east. The southern portion of the property slopes downward toward the south. And the western portion slopes downward toward the west.

"The primary mechanism for bluff recession is wave attack..."

Pg 2-15 - "As stated, bluff recession is episodic in nature."

See comments to Pg S-14 above.)

Sec 2.2.1 - Groundwater, Hydrology and Water Quality

Pg 2-16 - "Near the shore...water tends to flow horizontally...to be discharged...into streams or marine surface waters...due to the proximity of Long Island Sound and the presence of steep slopes along the site's western boundary, groundwater beneath the site flows toward the west."

Pg 2-17 - "The subject site...is characterized by shallow horizontal groundwater flow...water recharged in this zone is likely to contribute to the shallow groundwater flow system. This zone discharges to harbors, salt water bays and Long Island Sound."

Pg 2-21 - "In general, stormwater runoff will be generated from impervious surfaces such as roofs and driveways."

Pg 2-23 -(Existing) Site recharge is 13.76 MGYR/99.2% is precipitation

Sec 2.3 - Ecological Resources

Pg 2-26 - Vegetation - "The soil is relatively well drained throughout the majority of the site, with a fairly well decomposed leaf layer."

Pg 2-32 - "Trees...having a diameter of 30" DBH...have survived a minimum of roughly 86 years."

Sec 2.5.3 - Land Use Plan

Pg 2-66 - The Suffolk County "Commission also encourages the use of innovative stormwater disposal techniques utilizing natural features of the site and free form design."

Let's do that!

D-28
7.1

Sec.2.7.1 Cultural Resources

Pg 2-72 - "The visual character of the site is that of an attractive wooded parcel...similar in appearance to the developed parcels contiguous to the north and south."

Sec 3.0 - Significant Environmental Impacts

Pg 3-31 - Sec 3.7.1 - Visual Resources - "no significant impact is expected to occur with regard to road installation."

But see Table 2-5 which shows 15 specimen trees of average DBH 21.49" on one-quarter acre adjacent to North Creek Road.

D-29
4.1

Sec. 4.0 Mitigation Measures

Sec 4.7 - "Retention of naturally-vegetated buffers along all four boundaries will serve to mask the developed portion of the site from outside viewers...."

Sec 6.0 Alternatives

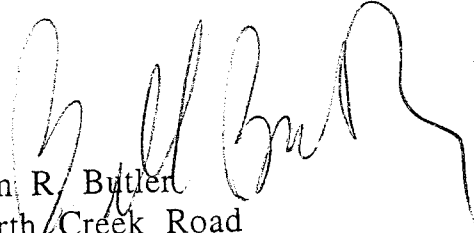
Lists sec 6.1 no action; Sec 6.2 previously-approved 22-lot subdivision "presented for comparison purposes only", and 6.3 "Revised Layout." Does not list the "Proposed Project."

Sec 6.3 - "This alternative would result in a significantly greater preservation of natural vegetation...with a higher level of visual/aesthetic protection. These factors may be sufficient to justify implementing the alternative in preference to the proposed project."

No action is not a real alternative. Twenty-two lot plan was submitted "for comparison purposes only" and is not before the Board. The DEIS appears to endorse the so-called alternative over the so-called proposed plan. It appears that the so-called proposed plan is a "straw man" and not a genuine proposal. That leaves the so-called alternative plan as the only genuine offering. Consequently, there is no genuine alternative in the DEIS.

D-30
6.6

Thank you for your consideration,



William R. Butler
48 North Creek Road
Northport NY 11768

April 6, 2001

MEMORANDUM

TO: Supervisor Frank Petrone
Mr. Jody Anastasia, Director, Maritime Services

FROM: Bill Butler

SUBJECT: Eaton's Neck Beach

I would like to put down some observations about the western shore of Eaton's Neck, with the hope that your expertise may correct any misapprehensions on my part.

HISTORY: These recollections will, no doubt, be familiar to you, but I set them down to clarify a basis of my observations.

It is my understanding that the aerial photos and other evidence show that the channel to the Coast Guard Inlet was created somewhere about World War I, or, as sometimes reported, 1920.

The late Mr. Ted Jaediker, who was in residence on North Creek Road during the 1938 hurricane, told me that the beach was 200 feet wide at that time. Mr. Clifford Emmerich, who lived on North Creek Road for many years, told me that as a child he visited here on outings in the family boat and that the beach was 200 feet wide at that time. Since Cliff is well into his 80s, his reference is apparently to the 30s.

I moved to North Creek Road in 1966, and there was about 20 feet of flat area with phragmites at the foot of the bank and about 30 feet of beach at high tide. No doubt you are familiar with the 1976 front-page photo in the Northport Observer that showed worn-down pilings exposed and the beach all cobble. That photo was taken immediately in front of my home. By that time, the flat area of phragmites was gone and the normal high tide was only a few feet from the toe of the bank.

My personal information is that the north end of the western shore lost 200 feet of beach in about 40 years from the 30s to the 70s, and my personal experience is that the loss was about 50 feet in the period 1966 to 1976. I cannot explain the apparent acceleration.

Dredging of the channel that was done before the late 70s resulted in the spoil disappearing, and it is generally understood that it was dumped in Long Island Sound. About 1976 it was arranged with the Coast Guard and Corps of Engineers to have the spoil deposited on the beach just south of the channel. (This was in accordance with Public Law 90-483, Sec. 111, which authorizes the Corps of Engineers to undertake "projects for the prevention or mitigation of shore damages resulting from Federal navigation works.")

This re-established the natural littoral drift around Eaton's Neck Point and southward along the western shore of Eaton's Neck. The beach stabilized and subsequently made a considerable recovery.

ENGINEERING: I will take it as established that the littoral drift is around Eaton's Neck Point and thence southward along the western shore of Eaton's Neck.

Since the start of the restoration of spoil to the beach, the western shore has been nourished by two sources: the dredged spoil and the erosion of the Hogan bluff. My calculations here are, doubtless, inaccurate because I do not have certain facts.

However, it was my understanding that the Corps formerly was scheduled to dredge about 5,000 cu yds every two-and-one-half years, or an average of 2,000 yds/yr. My rough calculation of the supply of sand from the Hogan bluff was 800 feet length by an average height of 60 feet by the erosion rate cited in the Environmental Impact Statement for the proposed Old Orchard Woods development of 1.9 feet/yr, or 3,777 yds/yr. (Mr Koopman earlier advised me that he believes the erosion rate to be only one foot/yr, but that he found my approach essentially correct.) In either case, the western shore has two sources of nourishment, and, clearly, this is none too much, or, more probably, is in a deficit condition.

It has been reported to me that the Corps now plans to do maintenance dredging annually. I assume that this means an average of 2,000 yds/yr.

It is interesting to note descriptions of littoral drift in the literature, such as "When the breakwater spit was dredged out every other year, great 'waves' of sand would flow slowly down the coast; there were beaches that existed only on alternate years." The citation is from "Waves and Beaches," Willard Bascom. Bascom also has various observations on continuous littoral drifting from Point Conception to Santa Barbara on the California coast, a distance of about 135 miles. He also cites an experiment with radioactive pebbles that moved a mean distance of 60 yards in four weeks of calm weather.

Bascom also observes - as I understand is the currently accepted idea - that "Because groins rarely give a satisfactory long-term solution, they are no longer the preferred means of maintaining a beach. In the long run they are usually more expensive and less effective than a 'beach nourishment' program."

POLICY: It is interesting to note in the Northport Observer article of December 2, 1976, a statement by former Supervisor Kenneth Butterfield that "We are against piecemeal work. We want a regional plan." (This probably referred to the individual groins installed along the western shore. These appear to me to be so insufficient and defective as to have little effect, although the situation that the beach is narrowest at the foot of Essex Drive makes one wonder why.)

It must be apparent that the sole source of nourishment for the northerly part of the western shore is the deposition of dredged spoil. The sources of nourishment for the southerly part of the western shore are 1) littoral drift of spoil from the northerly beach and 2) erosional material from the Hogan bluff. We are fortunate that the federal authorities have followed the precept of P. L. 90-483.

I believe that certain misapprehensions may have arisen from the February meeting of local representatives with you. No objection was raised to an emergency alteration of the established policy of placing dredge spoil on the northerly beach, but for one year only. This alteration left the northerly beach totally unnourished for this year, while the southerly beaches have the benefit of both sources of nourishment.

The future policy, we believe, must be rooted in a sound understanding of beach processes and regard for the entire western shore. This, in our view, must depend on utilization of the natural littoral drift.

Piecemeal, annual band-aid responses would not constitute a sound, long-range policy.

I am obliged for your patience in reading, and, by your leave, any better information that you can provide.

###

PLANNING BOARD
Incorporated Village of Asharoken

One Asharoken Avenue
Asharoken, New York 11768
(516) 261-7098

November 24, 1999

Mr. Richard Machtay
Director of Planning and Environment
Town of Huntington
Department of Planning and Environment
100 Main Street
Huntington, New York 11743

Re: Comments on the Draft EIS for the Old Orchard Woods Subdivision

Dear Mr. Machtay:

The North Creek area is unique: with a narrow dirt road which meanders along a natural gully, through an old Oak and Tulip tree forest that rises up on each side of the road; with homes set back from the road, high on the bluff that views Lloyd's Neck, Huntington Bay and the western Long Island Sound; and with the undeveloped, two-acre zoned, former Morgan Estate to the east. The Draft EIS states that the site "has long been and remains an area of distinctly rural atmosphere." Rather than preserving this unique property, to the greatest extent possible, the developer has submitted an unimaginative plan which maximizes the yield, widens this bucolic road to 34 feet, installs a large drainage basin (unique to Eatons Neck) that is a visual blight, fails to surface the main artery though this area, and provides no plan for the use or maintenance of the open space.

The Village of Asharoken supports the current movement to preserve this property as open space, providing adequate plans are put in place for its use, protection, and maintenance. In the event the property is subdivided, the following comments to the Draft EIS are offered.

- The yield map shows a possibility for 23 lots without properly taking into account the limitations of the Steep Slope Ordinance. In addition, the developer buys margin on the set-back from the bluff by asking for a front yard variance. Granting this variance is a form of down-zoning. Accounting for the referenced ordinance and not allowing the variance would bring the proposed yield below the proposed 22 plots.
- Widening the paved portion of North Creek Road from its southern terminus at Eatons Neck Road to the entrance into the development is excessive and would ruin the esthetics of the area. One need look no further than the adjacent Essex Drive to see that the extra width is taken up by cars parked and boats stored on either side of the road. The added width only serves to exacerbate the water run-off problem.
- The recommended Recharge Basin in the south-east portion of the subdivision is the least offensive from a visual standpoint when compared to the alternative. Careful

attention should be given to a landscape plan that hides the basin to the greatest extent possible. Left unanswered is the runoff from upland property and from North Creek Road. We recommend that leaching catch basins be installed along the paved 16 foot extension of North Creek Road, described below.

- We recommend that the approximately 600 feet of North Creek Road within the development, from Apple Place northward, be paved to Huntington Town Standard with regard to construction but not width. Sixteen feet is more that adequate to handle the traffic without ruining the esthetics. If it remains a dirt road the HOA would be responsible to contribute their fair share to the upkeep. Based on similar experiences throughout Asharoken and Eatons Neck, there would be great difficulty in raising the money which then leads too much ill will. If the remainder of the road is developed at a later date, the developer will be long gone and the financing of the upgrade of this section would be doubtful.
- Everyone likes open space, it ranks up there with apple pie, motherhood, and the flag. Unfortunately, no thought is given to its ultimate use and maintenance. The memo from the Town Highway Department said they are not going to be responsible for this land. It could easily become a dumping ground for beer cans, old mattresses, etc. Let's see a plan that takes this issue seriously.

Very truly yours,



Andrew R. Mendelsohn, PE
Chairman

Cc:

William Kelly, Mayor of Asharoken

Stephen M. Jones, Director of Planning, Suffolk County Planning Department

April 26, 2000

Mr. Richard J. Dwyer, Director
Planning Board
Town of Huntington
Town Hall - 100 Main Street
Huntington NY 11743

RECEIVED

MAY 08 2002

TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

RE: Old Orchard Woods

Members of the Planning Board:

Please note that the right-of-way known as North Creek Road, which traverses the subject property, appears to be eligible for designation as an historic road.

Attached is a copy of a deed recorded December 4, 1893, reflecting a transfer of part of the neighborhood and referencing rights to the right-of-way. Also attached is a map filed September 16, 1893 showing the right-of-way.

My research indicates an earlier action in the Supreme Court of the State of New York sitting in the City of Brooklyn in 1851 specified the right-of-way, although the Brooklyn Borough Clerk has not been able to locate the document.

Sincerely,

William R. Butler
William R. Butler
48 North Creek Road
Northport NY 11768

*P.S. When appropriate, I would appreciate the return
of the documents herewith to me.*
Thes

SEARCHED	INDEXED
SERIALIZED	FILED
MAY 08 2002	
TOWN OF HUNTINGTON	
DEPARTMENT OF PLANNING AND ENVIRONMENT	
APPROVED	RECORDED
FILED	INDEXED

STATE OF NEW YORK
COUNTY OF SUFFOLK

SS:

I, EDWARD P. ROMAINE, CLERK OF THE COUNTY OF SUFFOLK AND CLERK OF THE SUPREME COURT
OF THE STATE OF NEW YORK IN AND FOR SAID COUNTY (SAID COURT BEING A COURT OF RECORD)
DO HEREBY CERTIFY THAT I HAVE COMPARED THE ANNEXED COPY OF
DEED 402 AT PAGE 541 RECORDED 12/4/1893
AND THAT IT IS A JUST AND TRUE COPY OF SUCH ORIGINAL DEED AND OF THE WHOLE THEREOF.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF SAID
COUNTY AND COURT THIS 29th DAY OF March 2001

CLERK

Edward P. Romaine

State of N.Y. to me personally known to be the same person as
described in and who executed the foregoing instrument, and they
severally acknowledged to me that they executed the same
Jno. J. O'Brien, Justice of the Peace.
Recorded 4th December 1893 @ 9 A.M.

Omney Ranning
Att

L. 402
pg. 541 This Indenture made the twenty eighth day of November in the
year one thousand eight hundred and ninety three. Between Thomas
S. Mount, Referee in the action herein after mentioned of the first
part, and Nathaniel S. Ackley and Andrew Ackley of the second
part, Whereas, at a special term of the Supreme Court
of the State of New York, held at the County Court House in
the City of Brooklyn, on the twentieth day of July, one thousand
and eight hundred and ninety three it was, among other
things, ordered, a decree was decreed by the said Court in
a certain action then pending in the said Court, between
E. Jones plaintiff and William E. Gardiner; George C. Gardiner;
Fanny E. Shelton; Gardiner Van Nostrand and Anna C. Van
Nostrand; Fanny E. Van Nostrand now Fanny V. P. Rans
and James O. P. Rans and her husband; John J. Van Nostrand
an infant; Sarah M. Marion and Oliver L. Jones defendants
That all and singular the premises mentioned in the
complaint in said action be sold in parcels including the
lot herein after described, be sold at public auction, according
to the course and practice of said Court, by or under the
direction of the said Thomas S. Mount who was thereby ap-
pointed as Referee in said action, and to whom it was
granted by the said order and judgment of the said Court
among other things, to make such sale, that the sa-
id sale be made in the county where the said premises
are situated and that the proceeds of such sale be
paid to the said action and to be distributed according to the
order of the said Court and to the parties in said action in and to the said order, all

sale, make report thereof to said Court, and after this report if
sale shall have been duly confirmed, it shall be lawful for the
purchaser or purchasers of the said premises, or each or parts
thereof, as should be sold, a good and sufficient deed or deeds of
conveyance for the same. This therefore, the said Referee, in pur-
suance of the order and judgment of the said Court, did on the
thirteenth day of September one thousand eight hundred and ninety
three sell at public auction, at the Suffolk Hotel in the village
of Huntington, Suffolk County, New York. The premises, in the
said order and judgment mentioned, due notice of the time and
place of such sale being first given agreeably to the said order
at which sale the premises herein after described were struck off
to Nathaniel S. Ackley and Andrew Ackley the said parties of
the second part for the sum of Seventeen hundred and twenty five
dollars, that being the highest sum bidden for the same, and
the said Referee's report of said sale having been duly confirm-
ed. Now this Indenture Witnesses, that the said Referee, the
party of the first part to these presents, in order to carry into ef-
fect the sale so made by him as aforesaid, in pursuance of the
order and judgment of the said Court, and in conformity with the
Statute in such case made and provided, and also in consid-
eration of the premises and of the said sum of money so bidden as
aforesaid being first duly paid by the said parties of the second
part, the receipt whereof is hereby acknowledged, hath bargained
and sold and by these presents, doth grant and convey unto the
said parties of the second part, Sit that certain parcel or plot of
land with the improvements thereon, situate, lying and being
at Eaton's Neck, in the Town of Huntington, County of Suffolk and
State of New York, bounded and described as follows: Beginning
at the south west corner of lot number 8, hereby described and at
the north west corner of lot number 4 on the shore; thence north
71 degrees east 16.13 chains to C. R. Delamater's land now or late
a stake; thence north 27 degrees 35 minutes west 1.13 chains to a
marble monument; thence south 76 degrees 30 minutes west
0.57 chains; thence south 87 degrees 37 minutes west 0.33 chains
to lower monument; thence north 31 degrees west 2.05 chains
thence north 7 degrees east 3.35 chains; thence north 19 degrees

55 minutes East 1.30 chains; thence north 45 degrees 30 minutes
East 2.15 chains north 37 degrees East 2.00 chains; thence north
6 degrees 45 minutes East 3.79 chains to a brass monument, thence
north 2 degrees 30 minutes West 2.00 chains to a brass monument
at the creek; thence south 19 degrees 30 minutes West 6.00 chains
along said creek to a stake on the beach; thence south 14 de-
grees 30 minutes West 1.00 chains; thence south (magnetic south)
3.15 chains; thence south 30 degrees 30 minutes West 7.70 chains;
thence south 10 degrees 30 minutes West 6.00 chains; thence
south 5 degrees 30 minutes West 2.50 chains to the place of begin-
ning. Containing 14,890.42 acres including highway; and the
appurtenances therunto belonging or in anywise appertaining.
The action above recited was brought to partition all lands
owned by Sarah Gardiner at the time of her death and it is
the intention hereby to grant and convey all the title and
interest she had at the time of her death which descended
to her heirs the parties to said action to the external bounda-
ries thereof as set off to said Sarah Gardiner by actual par-
tition in the Suffolk County Clerks office October 1st, 1844, includ-
ing all riparian and water rights adjoining the same,
this plot having been sold and is hereby conveyed subject
to the roadway rights shown on the same as described
in the judgment herein, and delineated on the map of
said premises on file in the office of the Clerk of the coun-
ty of Suffolk, New York. To have and to hold all and singular
the premises above mentioned and described and hereby
conveyed or intended to be, unto the said parties of the sec-
ond part, their heirs and assigns, to their only personal
benefit and behoof forever. In Witness Whereof the said
party of the first part, Referee as above and, Walter Terenute set
his hand and seal the day and year as above first written.
Thos S. Mount, Referee. 22. Seals and delivery in
the presence of the words "be sold in parcels including the parcels
above mentioned for execution. Livingston Co. N.Y.

County of New York, County of Suffolk, ss: On this 20th day of November
in the year one thousand eight hundred and ninety three before me
personally came Thomas S. Mount, whose name is known to be the
individual described in and who executed the within conveyance,
who thereupon duly acknowledged to me that he had executed the
same. Livingston Smith, Notary Public, Sd. Co. ss.

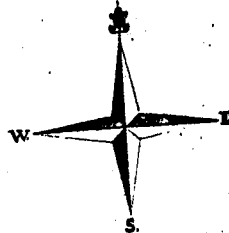
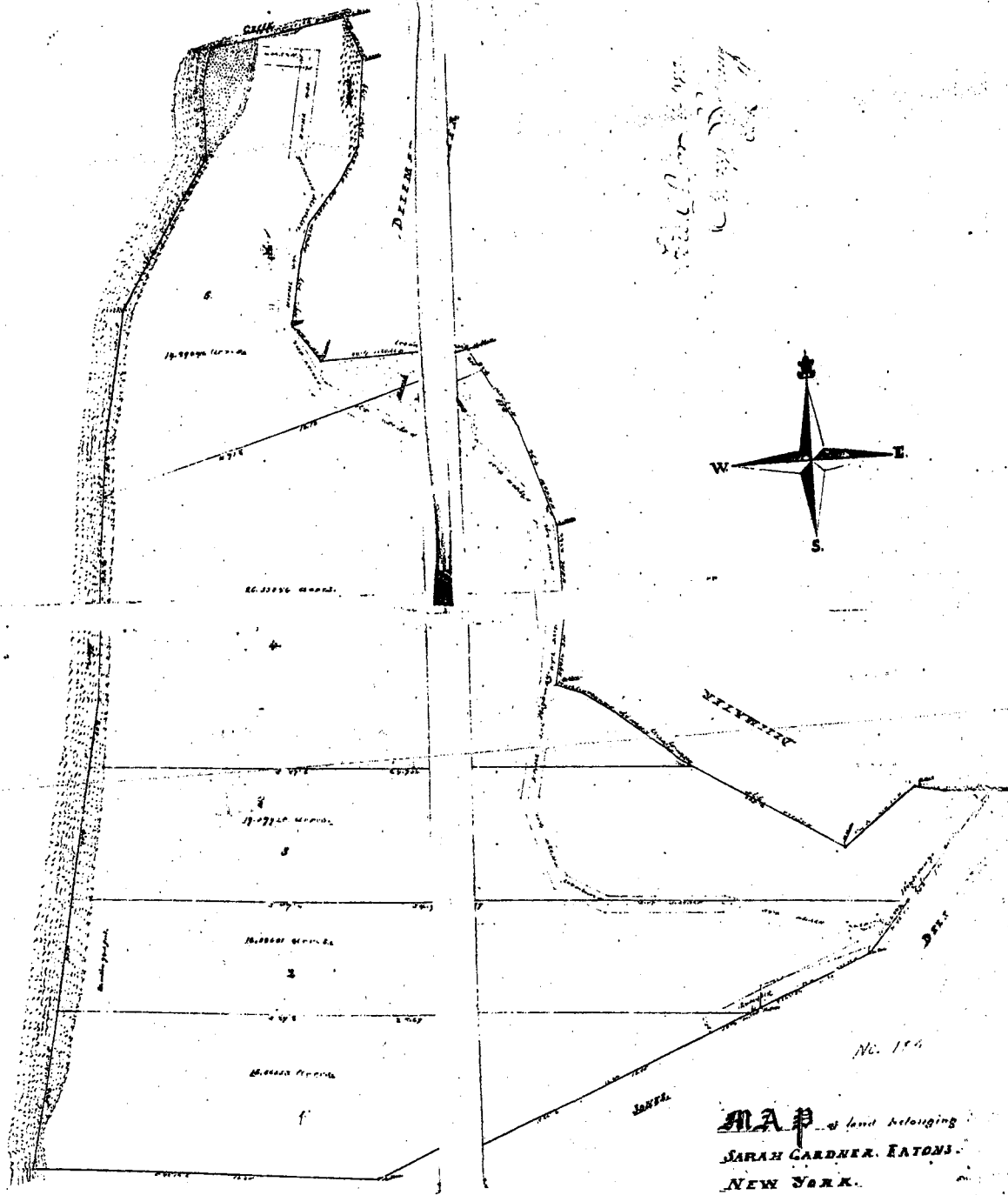
Recorded 2^d December, 1893 at 9a m.

Orange H. Manning

This indenture made the twenty eighth day of November in the year
one thousand eight hundred and ninety three between Thomas S.
Mount Referee in the action herein after mentioned, of the first part,
and Leander A. Berin, of the City, County and State of New York
of the second part; Whereas, at a special term of the Supreme Court
of the State of New York held at the County Court House in the
City of Brooklyn, on the Twentieth day of July one thousand eight
hundred and ninety three it was, among other things, ordered,
judged and decreed by the said Court, in a certain action then
pending in the said Court, between Mary E. Jones, plaintiff
William G. Gardiner; George C. Cartmear; Fanny E. Shelton;
Gardiner Van Nostrand and Anna E. Lissie; Fanny E. Van Nostrand
now Fanny V. N. Ramsdell, and James A. P. Ramsdell her hus-
band; John J. Van Nostrand an infant; Sarah M. Marvin and
Oliver L. Jones, defendants. That all and singular the premises
mentioned in the complaint in said action be sold in parcels
including the parcel herein after described, be sold at public
auction, according to the course and practice of said Court, by
or under the direction of the said Thomas S. Mount who was
thereby appointed a Referee in said action, and to whom it was
referred by the said order and judgment of the said Court among
other things, to make such sale; that the said sale be made
in the county where the said premises or the greater part thereof
are situated; that the Referee give public notice of the time
and place of such sale according to law and the course and
practice of said Court, and that any and all parties in said action
might become a purchaser or purchasers at such sale; that

BAY

SECTION



MAP of land belonging to the ESTATE of
SARAH CARDNER EATONS in **SENYA COUNTY**
NEW YORK.
 DISTANCES in chains and links.
 AREA includes Highways, &c.

FILED 185
 FILED SEPT 16 1893

Appendix D-4
Mario and Nadine Bottali

May 1, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

Appendix D-5
Dlieberman@qcc.cuny.edu

May 06, 2002



NELSON, POPE & VOORHIS, LLC
ENVIRONMENTAL • PLANNING • CONSULTING

Rob Jimenez

From: DLieberman@qcc.cuny.edu
Sent: Monday, May 06, 2002 12:19 PM
To: Rob Jimenez
Subject: comments about Old Orchard Woods DEIS an



ENVELOPE.TXT

The following message part was sent with the unknown
character set: "WINDOWS-1252"

To the Town of Huntington Planning Board,

I am writing in reference to the Public Hearing on the Draft Environmental Impact statement and Preliminary subdivision application for Old Orchard Woods. I spoke at the hearing and said most of what is contained in this letter. The purpose of this letter is to be more complete in my comments.

I believe the Board should not accept the DEIS nor approve the preliminary application for a number of reasons. There are three that I feel are preeminent. They are; the DEIS does not include a cluster alternative, the DEIS is shoddy and incorrect, and the survey of the site is incorrect (including that the true size of the property is smaller than indicated which should result in a smaller yield).

Page S-1 of the DEIS states that in 1988, 'The EAF recognized the potential for future subdivision of the larger parcel (the 24.21 acre subject site) and advocated for cluster development.' The inclusion of this statement leads to some interesting questions. This statement was not included in the previous DEIS or Final EIS for this site. Why was that the case? When cluster alternatives were proposed by the planning department for the previous application, they were opposed by the applicant and in the end not considered because no study was done as to the impact of the cluster plans.

D-34
6.5

Although the DEIS mentions cluster development being advocated, no cluster is presented as an alternative. The applicant's idea of a modified cluster is a far cry from what any one else would call a cluster, not to mention is put more homes on the bluff increasing stress not decreasing it. Any EIS that does not include a real cluster alternative is incomplete since the heart of the SEQRA law is to look at alternatives.

On page S-2 the applicant states that R-80 is out of character with the neighborhood since some adjacent properties are R-20. It should be noted that most of the property on Eaton's Neck in terms of area is zoned R-80 and if the incorporated areas are included very little of the area is zoned R-20 or smaller. This property is adjacent to a number of properties that are zoned R-80. The idea that a property should have the same zoning as an adjacent property would eventually, by a step-by-step process lead to all properties in the town being zoned R-5. Of course, the argument can be used in reverse and all properties would eventually be zoned R-80. Clearly, the applicant's argument is specious. The applicant also included a R-20 plan as an alternative. As all of the impacts are worse for this plan and since the property is zoned R-80, the R-20 subdivision should not be included in the EIS.

D-35
6.4

The DEIS contains statements about the tax revenue the development would generate. There is no analysis provided as to exactly how they came up with that figure. Based upon the taxes on

D-36
9.5

RECEIVED
MAY 06 2002
TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

DEPUTY DIR.	
ASST. DIR.	
PLANNING	
ADDED STAFF	
FROM	DOER

existing homes in the area, I do not see where the \$378,656 comes from. A better estimate would be less than \$200,000.

There is no proposed alternative to the recharge basin. Although it was mentioned that the alternatives to the recharge basin would be worse environmentally, alternatives were not included with a complete analysis, so the pros and cons could be weighed. Again, point to the fact that the heart of the process is to look at alternatives. If what might be reasonable alternatives are not included how can the proper decisions be made?

D-37
7.1

As to some points of fact in the DEIS. On page 2-49 there is a statement about a 20mph speed limit. The statement is incorrect for two reasons, the 20mph turn is placed on the wrong side of North Creek road and the 20mph curve ends before North Creek Road so that the speed limit near and at the intersection in question is 30mph. This was pointed out at the hearing on the previous EIS and still not corrected. Correcting this error would have been trivial. The lack of correction indicated how little effort went into doing this DEIS. This DEIS is just the previous EIS with minimal changes. Statements on page 2-69 confirm my analysis. Here the DEIS uses 1997 estimates when the 2000 census figures are available.

D-38
5.2

Next, I would like to comment about the bluff. The bluff erosion rate is stated to be 1.9 ft/yr as a worst case. Looking at two averages 0.8ft/yr (1885-1965) and 1.9ft/yr (1976-1996) makes me nervous. What I would like to see is a graph showing the recession rate as a function of time. As a Ph.D. physicist, I would not argue that some anomaly caused the higher rate. I would look at a graph to see if there is a trend. My best guess is that the recession rate is increasing. The evidence is, one, the recession rate as stated by the applicant has increased substantially from 1900 until today, and two, because of global warming sea level is rising and the number and severity of storms will increase. The assertion is that the bluff is receding due to erosion at the base due to tidal action. The DEIS states that the flow of water out of the bluff face is not important. It should be noted that an adjacent property has a bulkhead to protect the bluff. There is erosion taking place behind the bulkhead at the exact location where water is flowing out of the bluff.

D-39
2.2

If erosion to the bluff is a problem why is bulkheading not addressed in the DEIS? At the rate of 1.9ft/year every lot on the bluff will be non-conforming in a year or two. This will not leave the new home owners time to make a decision about bulkheading. Bulkheading should be studied as part of the DEIS. Bulkheading may not solve the whole problem because of the effluent from the bluff face. Only 10 bores were made and not more than one per proposed lot on the bluff. The DEIS claims that the clay layers are discontinuous, but with only one bore hole made in a lot how is one to know whether that clay layer extends under the whole lot. If it does, then all the water used on that lot will end up coming out the bluff face and adding to erosion.

D-40
2.2

I now come to my last and what I think is the most important problem with both the DEIS and the subdivision application. Everything is predicated on a survey that is incorrect. For instance, the survey has property Lot 399 lower than Lot 398. If anyone walked onto those lots they would know that 398 is lower than 399. If the topography on the survey is incorrect in this one point where else may it be incorrect? Even more important is that fact that survey is not current. It is at least 13 years old. For most sites that is not much of a problem, but for a site that is losing property to the sound and shrinking and that has an eroding bluff and changing topography, a current survey is critical. I went down to the beach and measured the distance from the top of the bluff to the base of the bluff. By using measurements of angles and using the maximum listed for the height of the bluff and that the top of the bluff has not eroded since the survey was done, I determined that somewhere between 30 ft and 60 ft of property was lost. But you need not use my figures. Page 2-25 of the DEIS contains an aerial photo of the property taken in 1994. From this photo one can see that eight years ago, the intertidal beach (land under water at mean high tide and thus no longer part of the property in question) is between 25 and 38 feet wide, consistent with my measurements. If all or part of what is indicated as maritime shrubland in 1994 is now part of the intertidal beach, the reduction in property size is even greater. Using the low end number of 30ft means a loss of over .5 acres and that the 4 lots on the bluff are already less than 2 acres and non-conforming. I would also like to point to page 2-14 in the DEIS. This

D-41
9.6

D-42
9.6

is a slope map that shows the steep slope of the bluff running right to the edge of the property line. This is not consistent with the page 2-25 which shows the intertidal beach and maritime shrubland, land clearly not of a steep slope. The slope map should show 25 to 60 feet of shallow slope at the Huntington Bay edge of the property.

I have indicated a number of errors with the DEIS and subdivision application. Let me point a last one out here. The DEIS states on page S-11, 'The beach will be accessible for the site residents via a 15-foot wide accessway, located between lots 3 and 4. This...beach. It will be a separate tax lot deeded to the HOA,...' This lot does not appear on the site plan, although it does appear on alternatives (those containing lot of less than 2 acres). Doing a little math and using the numbers on page S-6; the property is 24.21 acres (which is really isn't anymore), there are 2.70 acres of roads, 1.51 acres of recharge basin and 10 lots at 2 acres apiece.

D-43
9.4

That adds up to 24.21 acres. There is no place left for the .13 acres of beach access (15 ft wide by 382 ft long). The DEIS speaks of 24.34 acres on a 24.21 acre site, something that is impossible to achieve.

One last point on protection of the bluff. Part of the 3.4 acre conservation reserve area has already been lost to the sea. As the top of the bluff recedes much of the bluff edge will not be in the conservation area. The applicant indicates that there will be a set back from the bluff edge and that will be treated as an effective conservation area. This leaves the protection of the bluff to the individual homeowners. Who will police them to make sure they do not remove trees from that area to improve their views. While they are clearing brush, they might inadvertently cut down a tree. Or they remove saplings so that once the large trees go there are no trees to replace them. Also, the bushes that they would probably remove help stabilize the bluff so why are they being allowed to remove brush?

D-44
2.1

I thank you for taking the time to listen and read my concerns.

David Lieberman, Ph.D.
12 North Creek Road
Eaton's Neck

FAX

Date 5/6/02

Number of pages to follow 3

TO: Mr. Machtay
Director of Planning and
Environment
Town of Huntington

Phone (631) 351-3196

Fax Phone (631) 351-3257

FROM: David H. Lieberman
Queensborough Community College
Department of Physics – S-342
222-05 56th Avenue, Bayside, NY 11364

Phone 718.631.6366

Fax Phone 718.631.6608

CC:

REMARKS: ☐ Urgent ☒ For your review ☐ Reply ASAP ☐ Please Comment

~~These~~ This fax includes my comments on the DEIS and Subdivision application for Old Orchard Woods.

I emailed a copy of my comments to the email address.

I am faxing a copy to you to make sure they are included as part of the public comment. If they came in via email you need not include them twice.

Thanks.

David Liden

DIRECTOR
NATIONAL
ARCHIVE DIRECTOR

AGENCY
UNITED STATES
GOVERNMENT

RECEIVED
MAY 06 2002
TOWN OF HUNTINGTON
DEPARTMENT OF PLANNING
AND ENVIRONMENT

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David Lieberman, Ph.D.
12 North Creek Road
Eaton's Neck

Appendix D-6
Unknown Commentator (Heidi Levine?)

April 29, 2002





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Table of Contents

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Case

Long Island Pine Barrens Society, Inc. v. Town Bd. of Town of Riverhead

736 N.Y.S.2d 87

N.Y.A.D. 2 Dept., 2002.

Jan. 14, 2002. (Approx. 2 pages)



290 A.D.2d 448, 2002 N.Y. Slip Op. 00269

Supreme Court, Appellate Division, Second Department, New York.

In the Matter of LONG ISLAND PINE BARRENS SOCIETY, INC., et al., Appellants,

v.

TOWN BOARD OF TOWN OF RIVERHEAD, et al., Respondents.

Jan. 14, 2002.

Opponents of a development project brought an article 78 proceeding to review a determination of a town board granting a zoning change and site approval for the development. The Supreme Court, Suffolk County, Gerard, J., denied the petition and dismissed the proceeding, and the opponents appealed. The Supreme Court, Appellate Division, held that: (1) board improperly segmented the review process mandated by the State Environmental Quality Review Act (SEQRA); (2) board violated SEQRA by failing to consider a "no action" alternative; and (3) board did not sufficiently consider environmental mitigation measures. Reversed.

West Headnotes

[1] KeyCite Notes



199 Health and Environment

199II Regulations and Offenses

199k25.5 Environmental Protection in General

199k25.10 Environmental Impact Statement

199k25.10(2) Necessity for Statement

199k25.10(4) k. Relation Between Projects; Ongoing Projects. Most Cited Cases

Town board improperly segmented the review process mandated by the State Environmental Quality Review Act (SEQRA) when it granted a zoning change and site approval for a development project; the environmental impact statement (EIS) submitted by the developer and accepted by the board discussed only the environmental impacts anticipated from a golf course, though the developer proposed to build up to 333 houses in conjunction with the golf course, the environmental impacts of which remained unexplored. McKinney's ECL § 8-0101 et seq.; N.Y.Comp. Codes R. & Regs. title 6, § 617.2(ag).

[2] KeyCite Notes



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Term

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Loca

736 N.Y.S.2d 87
290 A.D.2d 448, 2002 N.Y. Slip Op. 00269
(Cite as: 736 N.Y.S.2d 87)

Page 2

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199k25.10(4) Most Cited Cases

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[2] **Health and Environment** ⚡25.10(8)
199k25.10(8) Most Cited Cases

Town board violated the State Environmental Quality Review Act (SEQRA) when it granted a zoning change and site approval for a development project without considering a "no action" alternative to the proposed development. McKinney's ECL § 8-0101 et seq.; N.Y.Comp. Codes R. & Regs. title 6, § 617.9(5)(v).

[3] **Health and Environment** ⚡25.10(6.3)
199k25.10(6.3) Most Cited Cases

Town board, when granting a zoning change and site approval for a development project, did not sufficiently consider environmental mitigation measures, in violation of the State Environmental Quality Review Act (SEQRA) in that the board refused to explore a purely organic system of maintaining the golf course at issue. McKinney's ECL § 8-0101 et seq.; N.Y.Comp. Codes R. & Regs. title 6, §

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617.9(5)(v).

*87 Regina Seltzer, Bellport, N.Y., for appellants.

Dawn C. Thomas, Town Attorney, Riverhead, N.Y., for respondents Town Board of Town of Riverhead and Robert Kozakiewicz as Town Supervisor.

Sive, Paget & Riesel, P.C., New York, N.Y. (David Paget, Steven C. Russo, and *88 David Yudelson of counsel), for respondent Traditional Links, LLC.

DAVID S. RITTER, Acting P.J., MYRIAM J. ALTMAN, NANCY E. SMITH and THOMAS A. ADAMS, JJ.

In a proceeding pursuant to CPLR article 78, *inter alia*, to review a determination of the respondent Town Board of the Town of Riverhead, dated February 1, 2000, granting a zoning change and site approval for the development of property in Baiting Hollow, the petitioners appeal from a judgment of the Supreme Court, Suffolk County (Gerard, J.), entered November 6, 2000, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is reversed, on the law, without costs or disbursements, the petition is granted, and the determination is annulled.

[1] We agree with the petitioners' contention that, under the circumstances presented here, the Town Board of the Town of Riverhead (hereinafter the Town Board) improperly segmented the review process mandated by the State Environmental Quality Review Act (SEQRA, ECL art. 8). The rezoning at issue was an integral part of a "Residential Golf" development (see, *Matter of Citizens Concerned for Harlem Val. Env't. v. Town Bd. of Town of Amenia*, 264 A.D.2d 394, 694 N.Y.S.2d 108; *Matter of Scenic Hudson v. Town of Fishkill Town Bd.*, 258 A.D.2d 654, 685 N.Y.S.2d 777; *Matter of Long Is. Pine Barrens Soc. v. Planning Bd. of Town of Brookhaven*, 204 A.D.2d 548, 611 N.Y.S.2d 917; *Matter of Schultz v. Jorling*, 164 A.D.2d 252, 255-256, 563 N.Y.S.2d 876). However, the Environmental Impact Statement (hereinafter EIS) submitted by the developer and accepted by the Town Board discussed only the environmental impacts anticipated from the golf course. Although the developer proposed to build up to 333 houses in conjunction with this golf course, it did not specify the number or locations of these habitations in its EIS, with the consequence that their environmental impacts remain unexplored. The Town Board was obligated to consider the environmental concerns raised by the entire project at the time of the rezoning application, and its failure to do so violated SEQRA (see, *Matter of Citizens Concerned for Harlem Val. Env't. v. Town Bd. of Town of Amenia*, supra; 6 NYCRR 617.2[ag]).

[2][3] In addition, the Town Board violated SEQRA by failing to consider a "no action" alternative to the proposed development (6 NYCRR 617.9[5] [v]). It also did not sufficiently consider "mitigation" measures (6 NYCRR 617.9[5][iv]) in that, *inter alia*, it refused to explore a purely organic system of maintaining the golf course at issue. Indeed, although for the purpose of the golf course alone the developer proposed to cut down nearly half of a large woodland area, the respondents have flatly denied that the project will have any adverse environmental impact, and insist that no mitigation measures of any sort are

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required (cf., Matter of City of Rye v. Korff, 249 A.D.2d 470, 671 N.Y.S.2d 526).

Under the circumstances, the Town Board failed to take a "hard look" at the proposed project under SEQRA (see, 6 NYCRR 617.9).

In light of the foregoing, we do not reach the parties' remaining contentions.

END OF DOCUMENT

Westlaw Attached Printing Summary Report
for
LEVINE, HEIDI 2487068 Monday, April 29, 2002 14:52:46 Central

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Request Created Date/Time:	Monday, April 29, 2002 14:52:00 Central
Client Identifier:	JSS
DataBase:	NY-CS
Citation Text:	736 N.Y.S.2d 87
Query Text:	TRADITIONAL LINKS RIVERHEAD
Print Command:	Current document, Complete result
Lines:	100
Lines Charged:	100
Documents:	1
Documents Charged:	0
Images:	0
Images Charged:	0

APPENDIX E

FINDINGS STATEMENT

OLD ORCHARD WOODS SUBDIVISION

Huntington Town Planning Board

July 19, 2000



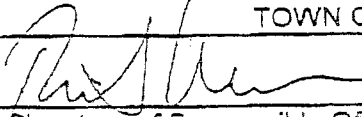
Application Number P1-472600-00093of Action Old Orchard Woods**CERTIFICATION OF FINDINGS TO APPROVE/FUND/UNDERTAKE**

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.9, this Statement of Findings certifies that

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including the effects disclosed in the environmental impact statement; and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.
4. (and, if applicable) Consistent with the applicable policies of Article 42 of the Executive Law as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

TOWN OF HUNTINGTON PLANNING BOARD

Name of Agency


Signature of Responsible OfficialRICHARD MACHTAY

Name of Responsible Official

DIRECTOR OF PLANNING AND ENVIRONMENTJULY 19, 2000

Title of Responsible Official

Date

100 MAIN STREET, HUNTINGTON, NEW YORK 11743

Address of Agency

OR

CERTIFICATION OF FINDINGS TO DENY

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.9, this Statement of Findings certifies that

1. The requirements of 6 NYCRR Part 617 have not been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action denied is one which fails to adequately minimize or avoid adverse environmental effects to the maximum extent practicable; and/or
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process cannot be adequately minimized or avoided by the mitigation measures identified as practicable.
4. (and, if applicable) Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will not adequately achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

Name of Agency

Signature of Responsible Official

Name of Responsible Official

Title of Responsible Official

Date

Address of Agency

FINDINGS STATEMENT
OLD ORCHARD WOODS SUBDIVISION
[Resubdivision of Lot 1 - Map of Hogan Plat]

PROJECT LOCATION

The project site is located on the northwest side of North Creek Road, approximately 750 feet west of Eaton's Neck Road in the hamlet of Eaton's Neck, Town of Huntington, designated as parcel 0400-001-01-004.1 on the Suffolk County Tax Map.

PROJECT DESCRIPTION

The action involves the modified subdivision of a 24.21 acre wooded, variably sloped, undeveloped, coastal site, zoned R-20, in order to construct twenty-two (22) new detached single-family homes; a standard 34-foot wide access roadway and an approximate 62,000 square foot recharge basin. A total of 5.7 acres of "Reserve Area" are proposed for preserving sensitive features of the site. Two reserve areas totaling 2.3 acres are proposed for dedication as passive Town of Huntington parkland. An existing 3.4-acre Reserve Area created with a previous subdivision (i.e. Hogan Plat) is proposed as privately-owned land and "Conservation Easement".

Except for a beach access stairway and shed at the northwest corner of the site, all existing structures are to be removed (i.e. principal residence, caretakers cottage, guest cottage, garage, sheds, pump houses, shacks, parking area and bituminous drive). A 14' wide easement is proposed to provide continued access to the beach between lots 9 and 10.

Improvements to North Creek Road are proposed from the limit of Town of Huntington jurisdiction to 80 feet north of the proposed entrance. The northerly, approximately 600' of North Creek Road along the site's frontage is proposed to remain unimproved.

PROJECT HISTORY

Old Orchard Woods is the re-subdivision of a previously filed map, known as Hogan Plat (Planning Board Final Approval 9/20/89, amended 10/25/89). The action involved a two (2) lot subdivision of 34 acres for the initial development of a single residence and garage on a 9.371 acre lot. No physical change was proposed at the time to the remaining 24.21 acres (now known as Old Orchard Woods) except that 3.4 acres of the property was required to be reserved along the Long Island Sound as open space and for bluff protection. A declaration of covenants, however, was approved by the Planning Board which included an exemption for bulk-heading and erection of docking facilities subject to approval by regulating agencies. It also has a provision that subdivision of the premises into two lots "...will satisfy any requirement that land be shown as a park upon this subdivision or any future subdivision of Lot 1 or Lot 2".

On March 10, 1999 the Planning Board, as lead agency issued a Positive Declaration on the action and directed the applicant to submit a Draft Environmental Impact Statement (DEIS). On June 25, 1999 a DEIS was submitted and found to be unacceptable by review staff. On September 1, 1999 the Planning Board amended the Positive Declaration and directed the applicant to prepare a revised EIS in accordance with staff comments, except for the rendering of the attached cluster alternative. A revised DEIS was submitted on September 29, 1999 and on

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October 6, 1999 accepted as complete for public review. The hearing on the DEIS was held on November 17, 1999 with comments accepted to November 27, 1999. A Final EIS (FEIS) on the action was received on February 18, 2000 and accepted as complete on April 27, 2000.

YIELD AND LAYOUT

In order to establish the number of lots for the subdivision of land (i.e. yield), NYSTL §278 requires a layout that in the Planning Board's judgement is conforming to the minimum lot size and density requirements of the zoning ordinance and conforming to all other applicable requirements. Where modifications are proposed, the Planning Board may approve alternative layouts, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands. NYSTL §277 also provides that the Planning Board may make a finding that "a proper case exists for requiring that a park or parks be suitable located for playgrounds or other recreational purposes within the town".

A key regulation relative to establishing yield is Town Zoning Code Article X, Steep Slope Ordinance. Any applications for subdivision approval of land in residential zoning districts classified R-20 with natural slopes of ten percent and greater are subject to a lot yield factor. Lots in an R-20 Residence District Zone, would typically establish yield based upon lots with areas of 20,000 square feet (minimum). However, due to the site's steep slopes an adjustment factor, pursuant to Article X was applied to limit building on slopes that may be too steep to accommodate a house.

On January 27, 1999 Planning Staff prepared a lot yield analysis which determined that twelve (12) lots one acre in size or larger were required in the hillside development area and that a total yield of 23 lots could be established. The study was based upon a layout that included a recharge basin and two (2) reserve areas totaling 7.1 acres. No parkland was shown.

Section 198-114 of the Zoning Code of the Town of Huntington allows the Planning Board to modify the zoning regulations "to encourage the most appropriate use of land consistent with the character thereof and with the general welfare of the community, to afford adequate facilities for the housing, circulation, convenience, safety, health and welfare of the population to safeguard the appropriate use and value of adjoining property; or to conserve the general character and value of property in the district. Unless otherwise specified in this Article, any modification of the zoning regulations made by the Planning Board in connection with plat approval shall be limited to size of lot, minimum yard dimensions, locations of buildings, location and extent of parking and loading areas and provision of public recreation areas, including parks and playgrounds, or public school sites."

Before SEQRA Review started the Planning Board discussed and decided yield, layout and parkland (meetings of 11/18/98, 12/2/98, 1/6/99 & 6/13/99). Of note was the Planning Board's meeting of January 6, 1999, where it was agreed to have the property lines extend into the 3.4-acre reserve area that was established with Hogan Plat. However, with the issuance of a Positive Declaration on March 10, 1999, the Planning Board determined that the proposed action would have significant impacts and alternatives had to be considered [SEQRA § 617.9(b)(5)]. Pursuant to Town Law §277(7), this can include the waiver "...when reasonable, any requirements or improvements for the approval, approval with modifications or disapproval of subdivisions or subdivisions to eliminate a sizable

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portion of the reserve area created with Hogan Plat and transfer it to the eastern border of the site (September 9, 1998 application). Although the applicant had offered to add reserve area, the Planning Board felt the proposal would lessen mitigation in an extremely sensitive area of the site and the amendment was withdrawn.

GEOLOGY, SOILS, TOPOGRAPHY AND INDIRECT IMPACTS

The DEIS estimates that approximately 8.91 acres of relatively flat and 4.03 acres of steeply sloped land will be impacted by the proposed action. Approximately 41,000 cubic yards of soil will be initially disturbed with up to 60,000 cubic yards of sand removed from the site. Tree removal, grading and excavation are required to accommodate:

- Improvements to North Creek Road.
- Homes and associated roads and driveways.
- Construction of the stormwater recharge basin.

Vegetated slopes are proposed to be protected by:

- Proposed reserve areas
- A 100' setback for all structures from the top of the bluff
- Conformance with the Town Steep Slope Ordinance and Coastal Erosion Management Regulations.

Other than the impacts to natural resources associated with clearing and grading, impacts such as dust and construction traffic would be short term in nature (less than 18 months). Soils that will be covered with impervious surfaces and permanently disturbed, total 2.84 acres (buildings and pavement). All disturbed areas that would not become impervious will be graded, reseeded and landscaped. Erosion and dust control will be undertaken in accordance with Town of Huntington's Subdivision Regulations, Erosion and Sediment Control Handbook and best management practices, to be determined and applied with Final Application.

Although the applicant's proposal retains the 3.4-acre reserve area created with Hogan Plat and adds a 2.3 acre buffer/reserve area along North Creek Road, it also has lots 3-10 encompassing the bluff down to the mean high water mark. This eliminates common ownership of the reserve area by incorporating a portion of the site's coastal frontage into each of these lots. This presents a number of problems, including rights of easement, protection of extremely steep hillside and biological diversity, less efficient use of potential waterfront infrastructure and decreased applicability of state coastal policy. The applicant is proposing a *Reciprocal Easement and Maintenance Agreement* to record against the eight lots along the bluff to provide a 'framework for the shared construction, maintenance and repair of any bulk-heading or other erosion control measures implemented at the toe of the bluff, if and when any of the owners of the eight residences along the bluff should deem said measures to be necessary in the future' (letter to Director, Department of Planning and Environment, dated 4/19/00). This Reserve Area would therefore remain in private ownership to be maintained by the individual lot owners, subject to proposed covenants and restrictions. The FEIS does not anticipate any activity in the Reserve Area other than normal pruning and clearing of dead brush. In addition to the 3.4-acre Reserve Area, a 100-foot setback from the crest of the bluff is proposed to restrict any construction within

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that area. The applicant proposes to encompass this entire area in a conservation easement to ~~allow~~ allow the Town to monitor compliance. As no public access is proposed to this area, compliance and enforcement would be difficult. The applicant's attorney has further indicated that for further protection of the bluff and slopes his client is willing to setback all construction 125 feet from the bluff and covenant that there will be no construction by future homeowners in that area.

Sections 2.3 and 2.4 of the FEIS responds to concerns regarding bluff recession and the reduction of sand transport to areas south of the site. In anticipating future development of the subject property, the applicant for Hogan Plat had requested a clause in the covenant for the 3.4-acre reserve area that allows construction of bulkheads or similar structures or taking other measures for hardening the bluffs. Since shoreline hardening is likely to eventually be undertaken as a result of the project, SEQRA requires the lead agency to consider the potential impacts. The supplemental analysis and studies in the FEIS regarding bluff recession and coastal geology indicated the following:

- The 1.9 foot/year bluff recession rate presented in the DEIS was established and verified with additional measurements as a conservative estimate. If no shoreline hardening is considered, no structure at least 100 feet from the existing bluff would be in jeopardy for 50 years.
- If shoreline hardening structures are constructed it would result in a reduction of sand to beaches adjoining and down-drift of the site.

In a April 19, 2000 letter to the Director of Planning & Environment, the applicant's attorney stated: "...the applicant has agreed to re-confirm the existing restrictions imposed by the Planning Board at the time of the subdivision of the property in 1989 by virtue of a new Covenant and Restriction and we have also agreed that each deed to the property owners along the bluff will contain a recital that the land is being conveyed specifically subject to the existing covenants and restriction. The applicant has also agreed to reference in each deed the additional rights intended to be given to the Town pursuant to the terms of that certain "Conservation Easement" forwarded to your staff for its review in November of last year. As you may recall, the offer of encumbering the bluff area with the added provisions contained in the Conservation Easement was made by the applicant in response to the staff's concerns that the Town has encountered difficulty in the past policing the covenants and restrictions on other projects. The recording of Conservation Easement and the specific reference to the same in each deed along the bluff is intended to address concerns as well as give the Town additional rights to monitor the adherence to the covenants and restrictions., the offer of encumbering the bluff area with the added provisions contained in the Conservation Easement was made by the applicant in response to the staff's concerns that the Town has encountered difficulty in the past policing the covenants and restrictions on other projects.

Although reserve areas and restrictive easements are proposed by the applicant for protecting geological resources, significant impacts (direct and indirect, short and long-term) are expected with the action, particular in regard to potential hardening of the bluff and the subsequent effect to littoral drift and beaches southward. The Planning Board can incorporate all appropriate measures in its decision that may be necessary to minimize or avoid adverse impacts. This can include substantive conditions in order to ensure the requirements of Part 617 are satisfied (The SEQRA Handbook, NYSDEC, 1992). A wider buffer along the bluff, owned and managed by a

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Homeowners Association offers greater protection to natural resources than that proposed in the applicant's preferred plan. Organizations holding common areas typically provide better monitoring and enforcement; improved protection of landscape and biological diversity and more efficient use of infrastructure. Further protection can be provided with review and approval of a stabilization plan for mitigating potential increased erosion of the bluff. Specific review, approval and conditions regarding any future hardening of the bluff would be conducted at the time of application for such construction by NYSDEC, pursuant to State Tidal Wetlands Law, Coastal Erosion Management Regulations and Town Marine Conservation Law.

WATER RESOURCES, FLOODING & SANITARY WASTEWATER CONCERNS

The property falls within the "coastal area" and "watershed" as established by the New York State Coastal Management program; the Coastal Hazard Erosion Area and Coastal Wetland Area. These areas are characterized by bluffs, coastal shoal and littoral zone. There is also a perched water table along the western portion of the site, approximately 45 feet below grade. Seeps observed along the bluff face are believed to be the result of these perched water conditions.

Contamination of water resources can occur due to runoff from lands that carry pathogens and dissolved inorganic matter. Input from septic systems, lawn fertilizers and pesticides and pathogens in soils can also degrade water quality and overall ecosystem health. The creation of a buffer area along the site's coastal frontage and the proper disposal of all stormwater runoff and sanitary effluent can mitigate impacts to water resources by bio-filtering contaminants. Studies of contaminants deposited on and adjacent to roadways, carried by stormwater to recharge basins indicate considerable attenuation of heavy metals before reaching the water table.

Urban non-point pollution (street runoff, lawn chemicals, etc.) is a significant source of contamination in the Long Island Sound watershed (The Long Island Coastal Management Program). To reduce the amount of overland runoff and impact to the Long Island Sound the Draft EIS prepared by the applicant states roadside catchbasins will be installed to direct runoff to the on-site recharge basin and lawn chemicals will be kept from running downslope westward onto and down the bluff by the intervening 100-foot buffer which will retain and slow down and recharge overland flow of runoff. However, the Final EIS states that due to the perched water table along western boundary, water recharged within 120 feet inland of the crest of the bluff can flow and discharge through the bluff face.

Sub-surface sewage disposal systems for single-family residences in Suffolk County must be constructed and conform with standards for the Suffolk County Department of Health Services of Section 760-502 of Article 5 and Section 760-710 of Article 7 of the Suffolk County Sanitary Code. Sewage disposal systems cannot be located in areas where groundwater conditions are not conducive to the proper disposal of wastewater. Systems must be at least 65 feet from bluffs and 3 feet above high seasonal groundwater. A typical leaching pool consisting of a three leaching sections, chimney and cover extends to a maximum depth of 25 feet below grade. Based on these requirements sanitary systems could be placed anywhere in the site, except within 65 feet from the bluffs. The FEIS states that the nearest septic system to the western border of the site lies approximately 230 feet inland of the bluff crest.

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would preserve approximately an additional 15 percent of oak-tulip forest. Subsurface leaching pools can be constructed in right-of-ways, under roadways, sidewalks and grass, reducing the area and clearing required for storm water recharge. However, leaching pools are highly dependent upon soil conditions and regular maintenance to function properly (Stormwater Management/Tidal Water Quality Remedial Study for Town of Huntington, Fanning, Phillips & Molnar, 1992). Leaching pools are generally used only in small drainage areas of less than eight acres (Town of Huntington Subdivision Regulations and Site Plan Specifications, A-101.2). There was concern from the Village of Asharoken Planning Board regarding potential flooding and the need for proper stormwater controls. The Village's concern is addressed with the construction of the recharge basin in the northwest corner of the site. Town conforming catch basins will be piped to the basin collecting runoff from the roads and surrounding hillsides. All recharge basin locations will be designed to meet the Town's 50% storage capacity requirement since positive overflow to a Town roadway or storage facility is not provided. Regardless of the final location of the recharge basin any overflow will eventually flow through the Village of Asharoken or private property. As stated earlier, *the applicant* proposes the recharge basin as mitigation for runoff and catchment for pollutants that may be present in stormwater runoff.

The potential for site development to significantly impact the quality of water resources in the area through stormwater runoff and sanitary waste generation will in part be mitigated with minimum buffers of 120 feet from the crest of the bluff and conformance to Suffolk County Department of Health Services and Standards and Town of Huntington Subdivision Regulations and Site Plan Specifications.

TERRESTRIAL AND AQUATIC ECOLOGY

The DEIS indicates that approximately 55.8 percent or 11.48 acres of native oak-tulip forest and 675 large trees (≥ 10 " diameter) will be removed from the site under the applicant's proposed development plan.

The project site is one of the last remaining, privately owned, undeveloped, high bluff property left in the Town of Huntington. The combination of the varied topography, rich soils and location along the Long Island Sound has produced a highly diverse habitat seen in few sites of this size in the Town.

Development will largely take place in the central portion of the site with most of the woodland habitat remaining along the eastern and western property boundaries. A tree survey utilizing two approximate 100'X100' plots was conducted to determine the average density of large diameter species within the site. It was determined that the site contains many large specimen trees, with some having a diameter of over 30" DBH (Diameter at Breast Height). Based on the two plots an average of 20.56" DBH was estimated across the site. It has been generally agreed by foresters that an approximate forest cover of 65 percent is the *minimum* necessary to provide the benefits associated with urban forest habitat (Tree City USA, Bulletin No. 31). Benefits derived from urban forest habitat include:

- Energy conservation through transpirational cooling, shade, and wind reduction,
- Sequestering of air pollutants,

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- Filtering dust,
- Noise buffering,
- Storm-water attenuation,
- Provision of wildlife habitat,
- Increased property value,
- Improved aesthetics, and
- Psychological well-being.

The FEIS states that that it is possible to preserve additional vegetation by decreasing clearing limits, particularly where lots are aligned with adjoining rear-yard setbacks and the use of twenty-four foot wide pavement areas within the right-of-way. Currently, 30-40 foot clearing limits during construction are proposed along rear yards. It is likely that following construction, individual homeowners will clear more vegetation creating yards 50-60 feet deep. Unless permanent clearing restrictions are provided or larger reserve areas are created, these measures would not provide any long term benefit.

Concerns relative to the potential presence of State Protected Wildlife Species (i.e. piping plover, least tern, common tern, northern harrier, osprey, eastern hognose snake, worm snake, spotted salamander, short-eared owl, common nighthawk and barnowl) were identified in the DEIS. The DEIS indicates Endangered and Threatened Species are associated with the beach and aquatic habitats on the site, which will remain natural and therefore any direct impacts to these species are not expected. Indirect impacts from shoreline hardening would be addressed at the time application is made to NYSDEC. Significant impact to Species of Special Concern are not expected as there is suitable habitat elsewhere in the vicinity. The DEIS includes a April 6, 1999 letter from the New York State Department of Environmental Conservation indicating no known occurrences of endangered, threatened or special concern wildlife species of rare plants, animals or natural communities or habitats on the subject site.

The applicant's proposal provides some mitigation in the way of vegetative preservation. Maximizing preservation of existing vegetation would allow a greater number of wildlife species to survive construction impacts. It is expected that some wildlife species will either die off or move to other sites. The Grading and Drainage Plan prepared for the project should provide for as little clearing as possible and try to allow for an area of forest that is continuous with adjoining forested areas in order that wildlife not be impeded in its movement.

TRAFFIC AND TRANSPORTATION

Vehicle access will be provided off North Creek Road, a private 50-foot wide access easement at the subject site's eastern property boundary. Improvements to North Creek Road are proposed from the limit of Town of Huntington jurisdiction to 80 feet north (past) the proposed entrance to Old Orchard Woods (i.e. Apple Place). The approximately northerly 600' feet of 18" wide road along the site's frontage, beyond Apple Place is to remain unimproved. All improved roadways are planned to be built and dedicated to Town of Huntington. If requested, the applicant has indicated a willingness to improve North Creek Road along the entire frontage of the site.

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The entire frontage of the subject site is on a private portion of North Creek Road, which the applicant proposes to improve. Said private road provides access to homeowners that live distal to the proposed development. Before improvement or dedication can take place ownership of the road and agreement by all involved must be obtained.

Traffic analysis for the 22 dwellings in the DEIS indicated that the project will generate an increase in traffic volume (17 vehicle trips in the AM peak hour and 22 in the PM peak hour). No change in Level of Service is anticipated from the proposed project. Town engineers have expressed concern that a fully conforming road from Eatons Neck Road to the new entrance (Apple Place) cannot be built unless bond improvements required for Hogan Plat are installed.¹ The applicant is prepared to coordinate and cause the Hogan Plat bond improvements to be completed simultaneously with the completion of the improvements to the Old Orchard Woods subdivision.

Another traffic concern is the sight distance to the southwest at the North Creek Road intersection with Eaton's Neck Road is 159 feet which is less than adequate for the current 30 MPH speed limit. Although the proposed subdivision will not directly effect sight distance, there were concerns and the DEIS and Final EIS recommended mitigating conditions including undertaking limited vegetative clearing, installation of traffic signs; reducing the speed limit to 25 MPH in this portion of the roadway [subject to Town Board approval] and use of a curved mirror. Inasmuch as road clearing along Eaton's Neck Road is not within the subject subdivision and is quite a distance away from the subdivision, *the applicant may not be able to mitigate the site distance concern.*

CONSTRUCTION IMPACTS

There is concern regarding potential impacts to the community (traffic, noise, dust) during the construction phase of the project. Movement of fill from the site will require trucks to travel across North Creek and Eaton's Neck Roads. A minimum of 18,000 cubic yards and up to another 42,000 cubic yards of fill may be removed resulting in a total of approximately 1,200 truck trips within a relatively short period of time.

The Town of Huntington Code § 141-2 prohibits "any person, firm or corporation to make, continue or cause to be made any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the Town of Huntington". This includes the erection (including excavation) of any building other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in case of emergency, and then only with a permit from the Director of the Department of Engineering, Building and Housing [§ 141-3(J)]. Further §156-8 of Town Code states "No person shall create or cause to be created a hazard and/or nuisance to the health, safety or general welfare of the people of the Town of Huntington by excavating, filling, removing vegetation or *leaving construction works* unattended when the condition is declared to be a hazard and/or nuisance by the Director of Engineering, Building and Housing of the Town of Huntington. Town inspectors will be monitoring activities for ensuring Town Code and approved plans are implemented. Mitigation for the noise and truck traffic during regular construction hours can not be mitigated.

¹ Town of Huntington, Engineering Review Division, Memorandum dated March 30, 2000

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LAND USE, ZONING & PLANS

The subject site is currently in private ownership and zoned for R-20 residential use. The proposed project is consistent with current zoning.

The proposed action will result in the permanent foreclosure of a future recreational opportunity and a major reduction of an open space important to the community (impact to a property listed on the Town Open Space Index). The subject property is a designated Town open space index parcel that provides attributes such as physical and psychological relief from the built environment, diversity of visual experience, protection of natural resources and groundwater recharge that will be impacted by the proposed action.

Based on the September 1974 Open Space Index for the Town of Huntington, the 24.2 acre subject site is part of a larger 56.4 acre Town designated Open Space Index Parcel (OSI # NE-1) that includes the Morgan Estate and others. These properties are described in the index as woodland, forest and second-growth woodland with bay or beach frontage with steep slopes having erosion potential. The Index defines priorities for insuring that open space is given the same consideration as other factors in granting or denying permits. Of six possible levels that can be assigned, the subject property was defined as "Priority 1", which carries the most immediate need of consideration. Recommendations call for affirmative action to preserve the property or to conserve its open space value and natural features.

Eaton's Neck is limited in the amount of parkland that is available for public use. Other than beach areas with limited play equipment and boat ramps, there is no publicly-accessible recreational parkland. The subject site appears to be the only large holding remaining in the *unincorporated* Town area that might potentially serve such purpose. Even though the limited density of development on Eaton's Neck might be viewed as being in some way protective of open space resources, there is a real public need for park space.

The subject property contains a specific form of habitat that is not presently represented in the Town's parkland inventory—high bluff. While Geissler's Beach contains a small remnant (which was disturbed and greatly reduced during construction of the adjoining subdivision), this site could provide an opportunity to protect such a significant resource, a site to "curate" for public appreciation of the Town's biodiversity. The proposed preliminary plan which extends lot lines to the coast, through this critical area, in lieu of a commonly-held reserve area as shown on the earlier Map of Hogan Plat, may not serve its future stewardship in the most environmentally-sensitive manner. Covenants and restrictions have been difficult to enforce on developed/developing sites throughout the Town. Divisive ownership of this high bluff face would threaten the subject site's uniform management and preservation.

In the absence of public acquisition, an alternative that maximizes housing away from sensitive bluff habitat, owned and managed as common area will minimize projected impacts to the maximum extent practicable.

COMMUNITY SERVICES

For the subject property, community services include school, police protection, fire protection, and drainage facilities. The DEIS

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indicated the proposed action will increase the population of Eaton's Neck by 94. This increase is not expected to have an significant impact on the demographic characteristics of the area or any of the service districts. Adequate provision of services (including school drop-off and pick-up activities) is questionable. Because of the lack of a proposed through street school buses will have a difficult time navigating subdivision roads and it may be impossible for such larger vehicles to turn-around.

A significant portion of North Creek Road is a narrow, 18 feet wide, dirt and gravel roadway. The project proposes to improve the road to Town standards to a distance of 80 feet north of the proposed entrance to the site. The remaining 600 feet along the site is shown to be unimproved and could limit access to drainage facilities and emergency vehicles to the community to the north. Although the action proposes the dedication of this 600 feet as a right-of-way to the Town for maintenance, without standard improvements the Town is not likely to accept dedication of the road. NYSL states a standard road must be 3 rods wide or 49.5 feet. It is customary and common practice of the Town to require a 50 foot wide right-of-way with 34 feet of pavement. Any less is not recommended for dedication.

CULTURAL RESOURCES

Cultural resources typically include historic, archaeological and visual resources. Important prehistoric and historic period resources were noted in and near Eaton's Neck. Due to the indicators of potential historic and prehistoric sensitivity of the property, the Department of Planning and Environment requested the applicant to prepare a Stage I Cultural Resources Assessment and a Stage IB field reconnaissance. However, no culturally significant recoveries were found as a result of the investigations.

Clearing of site vegetation and replacement with dwellings, roadway and lawn pose impacts to aesthetic qualities as viewed from the west and adjoining properties. Although, the proposed conservation easement and retention of peripheral buffers mitigates these impacts, potential clearing for water views remains a concern given the limited restrictions associated with the 100 setback from the bluff. Construction is prohibited, but clearing and replacement with lawn and landscaping may occur. **Maximum retention of natural vegetation will maintain views and vistas as well as improve stormwater recharge and reduce fertilizer and pesticide needs.**

ALTERNATIVES

The DEIS examined a range of four (4) alternatives development scenarios under the existing zoning requirements and which differ from the proposed action. The following provides a summary of each:

Alternative 1 - No Action

The site remains in its existing use and condition. If left undisturbed, the site will generate little traffic, solid waste or wastewater, it would use a minimal amount of potable water and would not generate employees or new residents. The site has been recommended for public purchase by the Town of Huntington EOSPA Committee. The applicant is aware of this recommendation and is open to entertaining offers for such a purchase. However, as of the date of this Findings Statement, neither the Owner nor the Applicant has been contacted by any Town, County or State agency.

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Alternative 2 - The site is developed similar to the proposed project, but with front yard setbacks conforming to Town Code.

This alternative is almost identical to the proposed action, except dwelling units would be moved ten feet further to the rear of each lot. Generally, the same disturbance and overall site clearing would result. Impervious area would increase slightly with a proportionate decrease in landscaping due to longer driveways. There would also be a decreased level of protection to bluff resources as dwellings on the westerly lots would be moved ten feet closer to the west.

Alternative 3 - Relocated Recharge Basin

This alternative is similar to the proposed action, except the recharge basin is moved to the northeastern corner (lowest portion) of the site.

Alternative 4 - Development with Increased Open Space Preservation

This alternative is similar to Alternative 3, except the cul-de-sac at the southerly end of Peach Court has been eliminated and lots revised for providing additional open space.

CONCLUSIONS

Analysis of the draft and final EIS and comments received during the SEQRA process have shown that the proposed project will result in adverse environmental impacts. Adverse impacts include:

- Loss of open space and visual resources
- Removal of native oak-tulip forest.
- Permanent alteration of the natural topography.
- Displacement and/or loss of wildlife species.
- Erosion and off-site sedimentation.
- Increase in sanitary flows.
- The potential for future shoreline hardening of the bluff and subsequent loss in sand to beaches adjoining and downdrift of the site.
- Positive storm water overflow from the site to private properties in the Village of Asharoken.
- Stormwater flows from landscaped surfaces to Long Island Sound.
- Increase in vehicle trips to local roadways.
- Increase in the number of residents and demand for community services.
- Temporary increase in construction traffic, fugitive dust and noise during construction.
- Possible increase of traffic hazard at the intersection of North Creek and Eaton's Neck Roads.

The DEIS examined a range of development scenarios permissible under the existing zoning requirements and which differ from the specific development. The FEIS introduced two additional alternatives, known as alternatives 5 & 6, which were designed to address many of the concerns expressed in relation to the proposed development. These new alternatives, however, were not compared and evaluated in the FEIS at the same level of detail as the four alternatives in the DEIS. Pursuant to 617.11(d) of SEQRA the Planning Board as lead agency has:

given consideration to the relevant environmental impacts, facts and conclusions disclosed in the EIS;
weighed and balanced the relevant environmental impacts with social, economic and other considerations;

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- provided a rationale for its decision;
- certified that the requirements of this Part have been met;
- that in the absence of a detailed evaluation of alternatives 5 & 6, the Planning Board has determined only the four alternatives in the DEIS will be considered, relative to the proposed action.

Although there remain impacts that can not be fully mitigated, short of the no-action alternative, and from among the development alternatives considered in the FEIS, Alternative 4 may be supported, incorporating as conditions to the decision the following mitigative measures (EIS-identified and verbally volunteered by the applicants attorney to the Planning Board at the Planning Board regular meeting of June 28, 2000):

- 1) No new structures including sanitary systems are to be located within 125-feet of the crest of the bluff. To keep the integrity of the lots this will require shifting the entire layout to the east, reducing the two (2) reserve areas proposed for dedication to the Town as parkland along North Creek Road. As a result this reserve area would not qualify as parkland under NYSTL and therefore shall be owned and maintained by the proposed Homeowners Association. All reserve and covenanted areas shall be common, owned and managed by the proposed Homeowners Association.
- 2) Implementation of Conditions 6, 7, 9, 10 11, 14c, & 16 of Suffolk County Planning Commission's Resolution of October 7, 1998 as listed in Suffolk County's Department of Planning's letter of the same date, attached and made a part hereto.
- 3) A limit of clearing during construction not to exceed 40 feet behind depicted building footprints.
- 4) Retaining walls in side and rear yards to minimize the removal of natural vegetation.
- 5) A stabilization plan for mitigating potential increased erosion of the bluff.
- 6) Lot widths of ± 115 for lots south of Apple Place for maximizing forest cover and habitat.
- 7) A Grading and Drainage Plan shall be submitted with Conditional-Final application that locates all trees 16" in diameter and larger within construction limits, by type, size and condition. The map shall be designed to protect the critical root zones of specimen trees and stands of importance to the maximum extent practicable.
- 8) North Creek Road along the subject site's frontage and all interior subdivision roads shall be improved to Town standards. Road widths less than Town standards will be considered by the Planning Board upon submission and review of formal engineering drawings provided such improvements, including the proposed storm water collection system and recharge basin are privately owned and maintained by the Homeowners Association. Hogan Plat bond improvements shall be drawn against or paid for the applicant under the prior subdivision to insure a fully improved conforming improved roadway. All roads to be dedicated to the Town will be subject to comments by the Highway Superintendent.
- 9) Site distance concerns along Eaton's Neck Road shall be addressed to the satisfaction of the Town Highway Department.
- 10) The FEIS did not address the Town Board-adopted Principles of Smart Growth and Livability, which were adopted on October 5, 1999 after a DGEIS had been accepted by the Planning Board, a public hearing held (November 17, 1999), and the public comment period on the EIS. *Should the subdivision proceed, it is anticipated that the project will incorporate*

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design elements within the complex that will enhance its livability. It may result in a decrease in traffic generation compared to development as proposed. That the project is not fully consistent with the Town Board's policies to promote Smart Growth and Liveability is primarily attributable to site zoning and not the proposal. It is not a downtown or neighborhood center location, the more ideal target area for such new development. The existing separation of the site from a mix of uses essential to daily life of the residents (e.g., shops, services, and civic facilities) reduces the project's potential to facilitate pedestrian accessibility or diminish automobile dependency.

- 11) During construction, the applicant shall provide dust control measures to mitigate air pollutant impacts to the surrounding community.
- 12) No construction vehicles (cars or trucks) shall be parked or stored on North Creek Road.
- 13) The developer will be required to install all sediment and erosion control measures and make sure that they are in place and functioning throughout the entire construction process.
- 14) A flagman will be stationed at the point of crossing at the intersection of North Creek and Eaton's Neck Roads during removal of fill for safety. Town road surfaces will be cleaned daily to remove tracked soil from truck movements. Any damage caused by construction traffic on local roads will be repaired at the applicant's expense.

Impacts that will be mitigated with Alternative 4 and the above conditions include:

- Loss of open space and visual resources as viewed from the west.
- Removal of native oak-tulip forest
- Permanent alteration of the natural topography.
- Displacement and/or loss of wildlife species.
- Erosion and off-site sedimentation
- Traffic (construction and post-construction)

Adverse impacts that cannot be avoided include:

- Increase in sanitary flows
- The potential for future shoreline hardening of the bluff and subsequent loss in sand to beaches adjoining and downdrift of the site.
- Positive storm water overflow from the site to private properties in the Village of Asharoken.
- Storm water flows from landscaped surfaces to Long Island Sound.
- Increase in vehicle trips to local roadways.
- Increase in the number of residents and demand for community services.
- Temporary increase in construction traffic, fugitive dust and noise during construction.